Supreme Court, U.S.
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No. 85-519

In The

Supreme Court of the United States

October Term, 1985

DR. WILLIAM C. RANDALL, DR. ROGER E. AUSTIN, DR. TOM W. ANDERSON and DR. MYREL A. NEUMANN,

Petitioners,

v.

B. J. LOFTSGAARDEN; ALOTEL INCORPORATED, a Minnesota corporation; PROPERTY DEVELOPMENT AND RESEARCH COMPANY, a Minnesota corporation; and 2361 BUILDING CORPORATION, a Minnesota corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1985
CERTIORARI GRANTED NOVEMBER 12, 1985

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

February 24, 1976 — Plaintiffs' Complaint filed in United States District Court for the District of Minnesota.

December 26, 1978 — Plaintiff Dr. William C. Randall's Amended and Separate Complaint filed.

May 18, 1979 — Plaintiffs' Dr. Myrel A. Neumann, Dr. Tom W. Anderson and Dr. Roger E. Austin's Amended Separate Complaint filed.

June 16, 1980 — Plaintiff Dr. William C. Randall's Fourth Amended and Separate Complaint filed.

June 16, 1980 — Defendants' Joint and Separate Answer to Plaintiff Dr. William C. Randall's Third Amended Separate Complaint filed.

June 16, 1980 — Defendants' Joint Separate Answer to Plaintiffs Roger E. Austin, Dr. Tom W. Anderson and Dr. Myrel A. Neumann's Second Amended Separate Complaint filed.

June 17, 1980 — Jury and court trial of action commenced.

June 24, 1980 — Court's charge to jury.

June 25, 1980 — Plaintiff Dr. Roger E. Austin, Dr. Tom W. Anderson and Dr. Myrel A. Neumann's Third Amended Complaint filed.

June 25, 1980 — Special verdict filed.

June 25, 1980 — Judgment of District Court entered, awarding Plaintiffs Dr. Roger E. Austin, Dr. Tom W. Anderson and Dr. William C. Randall each judgment in the sum of $35,000, plus costs, and awarding Plaintiff Dr. Myrel A. Neumann judgment in the sum of $52,500, plus costs.

July 7, 1980 — Defendants' Motion for Judgment Notwithstanding the Verdict or New Trial filed.

July 11, 1980 — Plaintiffs Dr. Roger E. Austin, Dr. Tom W. Anderson and Dr. Myrel A. Neumann's Motion for Prejudgment Interest, Attorney's Fees and Judgment on Section 12(2) Claims filed.

July 14, 1980 — Plaintiff Dr. William C. Randall's Motion for Supplemental Findings of Fact, Conclusions of Law and Amended Order for Judgment filed.

August 15, 1980 — Findings of Fact, Conclusions of Law and Order for Judgment filed.

August 15, 1980 — Memorandum Order entered, denying all Motions for Judgment Notwithstanding Verdict or for New Trial, awarding prejudgment interest, computed at 8% per annum from the dates of purchase, awarding costs, awarding attorney's fees to Plaintiffs William C. Randall, Dr. Myrel A. Neumann and denying attorney's fees to Plaintiffs Dr. Roger E. Austin and Dr. Tom W. Anderson.

August 15, 1980 — Judgment of District Court entered.

August 19, 1980 — Defendants' Notice of Appeal filed.

September 12, 1980 — Plaintiffs' Notice of Appeal filed.

June 10, 1982 — Opinion and judgment of the Court of Appeals for the Eighth Circuit.

May 24, 1983 — Memorandum and Order entered certifying to the Court of Appeals for the Eighth Circuit involving "a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order [might] materially advance the ultimate termination of the litigation" certain questions.

June 6, 1983 — Defendants' Petition for Permission to File Interlocutory Appeal filed.

June 20, 1983 — Order of Court of Appeals for the Eighth Circuit entered denying Petition for Permission to File Interlocutory Appeal.

December 2, 1983 — Court trial of action conducted.

February 22, 1984 — Judgment of District Court entered, awarding damages (including consideration paid, plus interest thereon, less tax benefits) as follows:

Dr. Tom W. Anderson	$50,290
Dr. Roger E. Austin	46,168
Dr. Myrel A. Neumann	60,518
Dr. William C. Randall	45,435,

awarding attorney's fees as follows:

Dr. Myrel A. Neumann	$14,000
Dr. William C. Randall	10,000,

and awarding costs.

March 26, 1984 — Amended Judgment entered, computing prejudgment interest at a rate of 8% simple interest per annum, thereby reducing the award of consideration paid, plus interest thereon, less tax benefits to:

Dr. Tom W. Anderson	$35,172
Dr. Roger E. Austin	31,277
Dr. Myrel A. Neumann	39,371
Dr. William C. Randall	31,565.

March 30, 1984 — Defendants' Notice of Appeal filed.

April 4, 1984 — Plaintiffs' Notice of Appeal filed.

July 16, 1985 — Opinion and judgment of Court of Appeals for the Eighth Circuit.

September 24, 1985 — Petition for Writ of Certiorari filed.

November 12, 1985 — Order granting certiorari entered.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil No 4-76-82

DR. ROGER E. AUSTIN, DR. TOM W. ANDERSON, DR. MYREL A. NEUMANN and DR. WILLIAM C. RANDALL,

Plaintiffs,

v.

B. J. LOFTSGAARDEN; ALOTEL INCORPORATED, a Minnesota corporation; M. S. NOAH; JOHN W. BURG; LYMAN H. COULT; ROBERT R. DUNLAP; and PROPERTY DEVELOPMENT & RESEARCH COMPANY, a Minnesota corporation,

Defendants.

FOURTH AMENDED AND SEPARATE COMPLAINT OF PLAINTIFF DR. WILLIAM C. RANDALL

Plaintiff Dr. William C. Randall, for his Complaint against Defendants, alleges and states:

JURISDICTION

1. The action arises under the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa; the Securities Exchange Act of 1934, 15 U.S.C. §§ 78-a-78jj; the Minnesota Uniform Securities Act, Minn. Stat. §§ 80A.01-80A.31, and the common law of Minnesota. The matter in controversy exceeds, exclusive of interests and costs, the sum of Ten Thousand and no/100ths ($10,000.00) Dollars.

2. Subject matter jurisdiction is invoked pursuant to 15 U.S.C. § 77v; 15 U.S.C. § 78aa; 28 U.S.C. § 1331; 28 U.S.C. § 1337; and the pendent jurisdiction of the Court.

PARTIES

3. Plaintiff Dr. William C. Randall ("Randall") was and is a citizen and resident of the State of Minnesota and was a purchaser of a unit in a limited partnership purportedly organized under the laws of the State of Minnesota.

4. On information and belief, the other above-named Plaintiffs were also purchasers of limited partnership units in Alotel Associates.

5. Defendant B. J. Loftsgaarden ("Loftsgaarden") is a citizen and resident of Minnesota. Loftsgaarden organized Alotel Associates for the purpose of building, furnishing and operating a motel in Rochester, Minnesota ("Rochester Ramada"), pursuant to a licensing agreement with Ramada Inns, Inc. From the organization of Alotel Associates until September 17, 1975, Loftsgaarden acted as one of two general partners of Alotel Associates.

6. Defendant Alotel Incorporated ("Alotel Incorporated") is a corporation incorporated under the laws of the State of Minnesota having its principal place of business in the State of Minnesota. From the organization of Alotel Associates until September 17, 1975, Alotel Incorporated acted as the other of the two general partners of Alotel Associates. Loftsgaarden was and is President and sole or controlling shareholder of Alotel Incorporated.

7. Defendants Property Development and Research Company ("PDRC") and 2361 Building Corporation ("2361") are corporations incorporated under the laws of the State of Minnesota having their principal places of business in the State of Minnesota. On information and belief, Loftsgaarden was and is president and sole or controlling shareholder of both PDRC and 2361.

8. Defendants M. S. Noah, John H. Burg, Lyman H. Coult, and Robert R. Dunlap are other officers and directors of Alotel Incorporated, PDRC and 2361 and were and are citizens and residents of the State of Minnesota.

9. Defendant Touche Ross & Company ("Touche Ross") is a partnership of certified public accountants operating in the State of Minnesota.

FACTUAL BACKGROUND

10. On or about April 15, 1973, Loftsgaarden organized Alotel Associates for the purpose of building, furnishing and operating the Rochester Ramada.

11. On or about April 25, 1973, Touche Ross prepared and supplied Loftsgaarden with a forecast which purported to estimate income, expenses, cash flow and tax consequences of projected operations of the Rochester Ramada from the persons purchasing limited partnership units in Alotel Associates.

12. Between April 25, 1973, and November 13, 1973, Loftsgaarden and Alotel Incorporated supplied an Offering Memorandum concerning Alotel Associates to Randall. The Offering Memorandum contained the forecast supplied by Touche Ross. In addition, Loftsgaarden and Alotel Incorporated made certain oral representations concerning Alotel Associates to Randall.

13. On information and belief, Loftsgaarden and Alotel Incorporated supplied copies of the Offering Memorandum to the other above-named Plaintiffs. In addition, Loftsgaarden and Alotel made oral representations of a

nature similar to those made to Randall to the other above-named Plaintiffs.

14. The Offering Memorandum was false and misleading in that it failed to disclose the following material facts:

(a) PDRC was then the fee owner of tracts of land on which the Rochester Ramada was to be built and operated.

(b) Loftsgaarden was the sole or controlling stockholder of PDRC.

(c) PDRC intended to convey the tracts of land on which the Rochester Ramada was to be built and operated to Alvin A. Holasek and Ward E. Holasek by a contract for deed.

(d) PDRC intended to enter into a written lease with Alvin A. Holasek and Ward E. Holasek by which PDRC would lease back from from Alvin a Holasek and Ward E. Holasek the tracts of land on which the Rochester Ramada was to be built and operated.

(e) PDRC intended to sublet the tracts of land which it leased back from Alvin A. Holasek and Ward B. Holasek to Alotel Associates.

(f) The above-mentioned sale was to be on terms which were more favorable to PDRC than would have been obtained from disinterested parties.

(g) The price paid by Alvin A. Holasek and Ward E. Holasek was in excess of the appraised value and the fair market value of the tracts of land on which the Rochester Ramada was to be built and operated and would not

have been paid if Loftsgaarden had not agreed that Alotel Associates would enter into a lease with Alvin A. Holasek and Ward E. Holasek.

(h) PDRC's cost was less than the price to paid by Alvin A. Holasek and Ward E. Holasek.

(i) The costs of the lease with Alvin A. Holasek and Ward E. Holasek into which PDRC intended to enter would be on terms less favorable than could have been obtained from disinterested parties.

(j) The costs of the sublease with PDRC into which Alotel Associates would be required to enter would be on terms less favorable to Alotel Associates than could have been obtained from disinterested parties.

(k) Loftsgaarden was the sole or controlling stockholder of 2361.

(l) Alotel Associates would be required to pay 2361 a fee for constructing the Rochester Ramada which was neither comparable to not competitive with the fee which Alotel Associates would have been required to pay to a disinterested party rendering comparable services.

(m) Alotel Associates would be required to reimburse PDRC for a loan commitment fee paid to Progressive Underwriters of Des Moines, Iowa,

(n) Loftsgaarden expected to be paid a fee of Two Hundred Forty Thousand and no/100ths ($240,000.00) Dollars for acting as the developer of the Rochester Ramada.

(o) Loftsgaarden had been named as a defendant in *Trustees of Minnesota Bakers Union Pension Fund v.*

Loftsgaarden, File No. 380190 (Ramsey County Dist Ct.). Said action was based upon allegations that Loftsgaarden and others had violated the Minnesota Blue Sky Law and had made certain misrepresentations in connection with the sale of securities.

(p) Loftsgaarden and Alotel Incorporated never intended to require 2361 to remedy any substantial defects which might occur in the construction of the Rochester Ramada including, but not limited to, deficiencies in the air conditioning/heating system and leaks in the roof and walls of the motel building.

(q) Loftsgaarden had defrauded Steve Hawrysh, an individual with whom Loftsgaarden dealt in connection with the construction and operation of an apartment project in Marshall, Minnesota.

(r) Loftsgaarden and Alotel Incorporated intended to perform only minimal services in return for the management fee which Alotel Associates would be required to pay them.

(s) Loftsgaarden and Alotel Incorporated would cause Alotel Associates to pay them management fees in preference to operating expenses, payments of mortgage principal and interest and real estate and other taxes.

(t) Loftsgaarden would cause materials purchased for use in constructing the Rochester Ramada to be transferred from the site and to be used in constructing other real estate development projects in which Loftsgaarden had an interest.

(u) Investors might realize taxable income if and when Alotel Associates failed financially.

(v) Loftsgaarden had attempted to organize another partnership at an earlier date. The purpose of that partnership would have been to construct and operate a Ramada Inns hotel/motel on the site which the Rochester Ramada was constructed. At that time Loftsgaarden had projected that costs of construction and operation would be higher and that depreciation and profits would have been lower than the costs, depreciation and profit predicted in the Offering Memorandum.

(w) Alotel Incorporated had not been and would not be funded.

(x) Noah, Burg, Coult and Dunlap had not functioned and would not function as directors of Alotel Incorporated.

(y) One Hundred Thousand and no/100ths ($100,000.00) Dollars would not be a sufficient amount of capital to provide a reserve for initial operating expenses.

(z) Loftsgaarden expected that he or PDRC and 2361, corporations of which he was the sole or controlling shareholder, would earn substantial profits through the sale and lease-back of the land upon which the Rochester Ramada was to be located.

aa) Loftsgaarden owned a thirty (30%) percent interest in arc-TECH, Inc. Loftsgaarden and Alotel Incorporated intended to retain arc-TECH, Inc., as the architect to design and supervise the construction of the Rochester Ramada and to pay arc-TECH,Inc., the disclosed fee of Ninety Thousand and no/100ths ($90,999) Dollars.

(bb) Loftsgaarden expected that he or 2361 would receive compensation as a result of the development of the

Rochester Ramada and that compensation would not be limited to the "Overhead and Profit" disclosed on page 28 of the Offering Memorandum. That compensation was expected to be in excess of Two Hundred Forty Thousand and no/100ths ($240,000) Dollars.

(cc) PDRC, a corporation of which Loftsgaarden was the sole shareholder, would be paid a commitment fee by Alotel Associates for obtaining financing.

(dd) Alotel Associates would pay Coult, a director of Alotel Incorporated, through Coult Mortgage Corporation, a commission of Twenty-five Thousand and no/100ths ($25,000) Dollars for selling the property upon which the Rochester Ramada was to be located.

(ee) Previously Loftsgaarden had attempted unsuccessfully to organize Alotel Associates using a different Offering Memorandum. The risks associated with the reorganization of Alotel Associates increased the possibility of loss to Randall and other investors.

(ff) Loftsgaarden had caused 2361 to employ and pay Paul Crawford ("Crawford") to offer to sell, to solicit offers to buy and to sell partnership units of Alotel Associates even though the Commissioner of Securities of the State of Minnesota had suspended Crawford's license to sell such units because of his acceptance of compensation for advising persons to purchase such units.

(gg) One Hundred Thousand and no/100ths ($100,000.00) Dollars would not be a sufficient amount of capital to provide a reserve for initial operating expenses.

15. The Offering Memorandum was false and misleading in the following particulars:

(a) The Offering Memorandum stated that construction and furnishing of the Rochester Ramada could be

accomplished for a total expenditure of Three Million One Hundred Fifty Thousand and no/100ths ($3,150,000.00) Dollars. Actual costs of construction and furnishing were considerably in excess of Three Million One Hundred Fifty Thousand and no/100ths ($3,150,000.00) Dollars.

(b) The Offering Memorandum stated that total rent for the land on which the Rochester Ramada was to be located would be Thirty Seven Thousand Two Hundred and no/100ths ($37,200.00) Dollars per year. The actual rent to be paid by Alotel Associates pursuant to a lease executed by PDRC and Alotel Associates on October 24, 1973, was Seventy Thousand Two Hundred and no/100ths ($70,200.00) Dollars per year.

(c) The Offering Memorandum stated that interim construction financing would be obtained at a rate of nine and one-half (9½%) percent per annum. Interim construction financing had been obtained from the First National Bank of St. Paul at a rate which was to be four (4%) percent per annum above the prime rate. At the time that Randall purchased his limited partnership unit the prime rate was ten (10%) percent per annum and interim construction financing was costing fourteen (14%) percent per annum.

(d) The Offering Memorandum stated that a maximum of twenty (20) limited partnership units were to be sold. Eventually, twenty-five (25) such units were sold.

(e) The Offering Memorandum stated that Alotel Associates would use the proceeds from the sale of limited partnership units to construct and furnish the Rochester Ramada and to provide One Hundred Thousand and no/100ths ($100,000.00) Dollars for initial operating ex-

penses and that, if more than fourteen (14) but less than twenty (20) such units were sold, Alotel Associates might borrow funds or lease items to furnish the Rochester Ramada. Although twenty-five (25) limited partnership units were sold, Alotel Associates was required to obtain a loan and to grant a chattel mortgage in order to furnish the Rochester Ramada and did not have One Hundred Thousand and no/100ths ($100,000.00) Dollars available for initial operating expenses.

(f) The Offering Memorandum stated that construction of the Rochester Ramada would be completed on or before December 1, 1973, and that the Rochester Ramada would be opened for occupancy in December, 1973. The Rochester Ramada was not opened for occupancy until June 1, 1974.

(g) The Offering Memorandum stated that Loftsgaarden and Alotel Incorporated were to receive compensation of Eleven Thousand Five Hundred and no/100ths ($11,500.00) Dollars per year plus a percentage of the net profit of Alotel Associates. Loftsgaarden expected to be paid an additional fee of Two Hundred Forty Thousand and no/100ths ($240,000.00) Dollars for acting as developer of the Rochester Ramada.

(h) The Offering Memorandum stated that Loftsgaarden had been engaged in real estate development since 1962 and implied that his participation in such development had been conducted in a manner satisfactory to the persons who had invested in those projects. In fact, Loftsgaarden had defrauded Steve Hawrysh, an individual with whom he dealt in connection with the construction and operation of an apartment project in Marshall, Minnesota.

(i) The offering Memorandum stated the amount of the total interest which was expected to pay for interim construction financing. There was no disclosing that this expectation depended upon the prime rate remaining constant at five and one-half (5½%) percent per year and upon the completion of construction within seven (7) months.

(j) The Offering Memorandum stated that the land on which the Rochester Ramada was to be built had been leased for an initial term of forty (40) years with options for renewal executed by Alotel Associates thereafter. No such lease in fact existed, and no lease containing the terms disclosed by the Offering Memorandum was ever executed.

(k) The Offering Memorandum stated that construction of the project would begin in May 1973 and would be completed by December 1973. Loftsgaarden and PDRC and 2361, corporations of which Loftsgaarden was the sole shareholder, expected that construction would require at least one year.

(l) The Offering Memorandum stated that Alotel Associates would obtain Two Hundred Forty and no/-100ths ($240,000) Dollars by executing five-year notes at an interest rate of eight (8%) percent per annum. Alotel Associates would only be able to obtain a loan of $240,000.00 by returning a chattel mortgage on the furniture and fixtures of the Rochester Ramada and at a rate of interest which would be three (3%) percent per annum over the prime rate.

(m) The Offering Memorandum stated that long term financing of the project had been obtained from Larwin Realty & Mortgage Trust ("Larwin") at an interest

rate of nine and one-half (9½%) percent per annum. Alotel Associates could not, without using a nominee, use the commitment from Larwin because the interest rate would have benn (sic) usurious. The risk that the long term loan would be found to be usurious was so substantial that Larwin could refuse to honor its commitment without extensive assurances of the legality of its loan. Such assurances could only be provided at a substantial and undisclosed cost to Alotel Associates.

(n) The Offering Memorandum contained budgets and forecasts. Those budgets and forecasts were based upon assumptions and a rationale that were not reasonable and were misleading in light of the facts known to Loftsgaarden, PDRC and 2361.

(o) The Offering Memorandum stated that Alotel Associates would enter into a fixed fee construction contract with a construction company owned or controlled by persons owning or controlling Alotel Incorporated for the construction and furnishing of the Rochester Ramada Inn for a total expenditure of $3,150,000. Loftsgaarden did not cause Alotel Associates and 2361 to execute such a contract and did not intend to do so.

(p) The Offering Memorandum stated the identity of the officers and directors of Alotel Incorporated. Those officers and directors had not agreed to be active as directors and officers. It did not disclose that Alotel Incorporated had not been and would not be funded or that Loftsgaarden did not intend to act as an active or financially responsible general partner.

(q) The Offering Memorandum stated that it would not be registered with the State of Minnesota or with the

Securities and Exchange Commission. It did not disclose that the failure to registration would mean that the Commissioner of Securities of the State of Minnesota would not pass upon whether the Offering Memorandum would be fair and equitable as required by Minnesota law as he would if the Offering Memorandum had been submitted to him for registration. It did not disclose that the Offering would not have been approved if it had been submitted to the Commissioner of Securities because it was inconsistent with the disclosure and fairness rules which had been adopted by the Commissioner.

(r) The Offering Memorandum stated that the partnership agreement provided that unless seventy (70%) percent of the units had been sold within one hundred eighty (180) days of the date of the sale of the first unit, the partnership would terminate and all funds would be returned to investors. Loftsgaarden had commenced construction and had committed himself to raise Eight Hundred Seventy-five Thousand and no/100ths ($875,000.00) Dollars as investor capital and could not afford to and never intended to return funds to investors.

16. On or about November 13, 1973, in response to a solicitation from and an offer to sell by Loftsgaarden and Alotel Incorporated, and in reliance on representations made in the Offering Memorandum and otherwise, Randall subscribed to purchase one (1) limited partnership unit in Alotel Associates for Thirty-five Thousand and no/100ths ($35,000.00) Dollars. At that time, Randall made payment of Two Thousand and no/100ths ($2,000.00) Dollars of the purchase price. On or before December 1, 1973, Randall made payment of the balance.

17. On information and belief, the other above-named Plaintiffs also purchased limited partnership units in Alotel Associates.

18. On or about March 13-14, 1975, Loftsgaarden and Alotel Incorporated communicated to Randall that Alotel Associates was experiencing cash flow problems, that Randall's limited partnership interest was in jeopardy and that those problems could be resolved and Randall's partnership interest protected if Randall and each other holder of a limited partnership unit would make a non-recourse loan in the amount of Three Thousand Five Hundred and no/100ths ($3,500.00) Dollars to Alotel Associates.

19. That representation was false and misleading in that loans of Three Thousand Five Hundred and no/100ths ($3,500.00) Dollars by every owner of a limited partnership unit would not be and was not sufficient to resolve the cash flow problems of Alotel Associates or to protect Randall's financial interests.

20. On or about April 14, 1975, in response to the March 13-14, 1975 communications from Loftsgaarden and Alotel Associates, Randall loaned Three Thousand Five Hundred and no/100ths ($3,500.00) Dollars to Alotel Associates.

21. On information and belief, the other above-named Plaintiffs made similar loans.

22. On or about May 16, 1975, Loftsgaarden and Alotel Incorporated communicated to Randall that Alotel Associates was experiencing additional cash flow problems, that Randall's partnership interest was in jeopardy and that those problems could be resolved and Randall's part-

nership interest protected if Randall and each other holder of a limited partnership unit would loan an additional Two Thousand Two Hundred Fifty and no/100ths ($2,250.00) Dollars to Alotel Associates.

23. That representation was false and misleading in that loans of Two Thousand Two Hundred Fifty and no/100ths ($2,250.00) Dollars by every owner of a limited partnership unit would not be and was not sufficient to resolve the cash flow problems of Alotel Associates or to protect Randall's financial interests.

24. On or about May 31, 1975, in response to the May 16, 1975 communications from Loftsgaarden and Alotel Associates, Randall loaned an additional One Thousand Two Hundred Fifty and no/100 ($1,250.00) Dollars to Alotel Associates.

24a. On information and belief, the other above-named Plaintiffs made similar loans.

24b. On or about December 31, 1975, in response to the March 13-14, 1975, and May 16, 1975 communications from Loftsgaarden and Alotel Associates and in response to communications from others, Randall loaned an additional Two Thousand Seven Hundred Fifty and no/100ths ($2,750.00) Dollars to Alotel Associates.

25. On information and belief, the other above-named Plaintiffs made similar loans.

CAUSES OF ACTION

Count One

26. Plaintiff Randall realleges all of the allegations contained in Paragraphs 1 through 25 herein and incorporates the same by reference as if set forth in full herein.

27. Loftsgaarden and Alotel Incorporated offered to sell and sold one (1) limited partnership in Alotel Associates to Randall by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails.

28. Loftsgaarden and Alotel Incorporated either had knowledge or pursuant to reasonable investigation should have had knowledge of said untrue statements and omissions.

28a. Loftsgaarden and Alotel Incorporated continued to fraudulently conceal their untrue statements and omissions by making additional untrue statements and omissions.

28b. Randall diligently examined all financial statements and other materials provided to him by Loftsgaarden and Alotel Incorporated and questioned Loftsgaarden and Alotel Incorported about the financial condition of Alotel Associates. Loftsgaarden and Alotel Incorporated continued to reassure Randall that their earlier statements to him were true and that their projections would prove to be true. Randall accepted those reassurances.

29. Randall relied on each of said untrue statements and omissions.

30. Said untrue statements and omissions constitute violations of Section 12(2) of the Securities Act of 1933, 15 U.S.C. § 77.

30a. On or about November 13, 1973, Loftsgaarden and Alotel Incorporated delivered the Offering Memorandum to Randall. The Offering Memorandum contained and omitted the matters alleged in Paragraphs 14 and 15.

30b. On or about February 12, 1975, and on or about March 13-14, 1975, Loftsgaarden and Alotel Incorporated communicated the matters alleged in Paragraph 18. Those matters were communicated by letter and at a meeting of limited partners of Alotel Associates.

30c. Randall employed John Essene, an accountant, and Douglas M. McMillan, an attorney, to investigate Loftsgaarden and Alotel Incorporated's dealings with Alotel Associates. However, because Loftsgaarden and Alotel Incorporated failed to maintain books and records for Alotel Associates in a fashion which would permit Randall or his agents to determine Alotel Associates' financial condition or to discover Loftsgaarden or Alotel Incorporated's misrepresentations or omissions and because Loftsgaarden and Alotel Incorporated continued to reassure Randall and his agents that Loftsgaarden and Alotel Incorporated had and would continue to manage the affairs of Alotel Associates in businesslike manner, neither Randall nor his agents were able to discover Loftsgaarden and Alotel Incorporated's misbehavior.

30d. On or about November 1, 1975, Gene Happe, an attorney, first discovered what he considered to be fraud by Loftsgaarden and Alotel Incorporated. He reported his discovery of potential fraud to Randall at a subsequent time. Shortly thereafter, Plaintiffs' attorneys, Happe & Happe, by Dale J. Happe, commenced this action.

31. By virtue of Loftsgaarden's and Alotel Incorporated's violations of Section 12(2), Randall has been damaged in the amount of Forty-two Thousand Five Hundred and no/100ths ($42,500.00) Dollars.

Count Two

32. Randall realleges all of the allegations contained in Paragraphs 1 through 31 herein and incorporates the same by reference as if set forth in full herein.

33. Said untrue statements and omissions constitute violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

34. By virtue of Loftsgaarden's and Alotel Incorporated's violations of Section 17(a), Randall has been damaged as set forth in Count One.

Count Three

35. Randall realleges all of the allegations contained in Paragraphs 1 through 34 herein and incorporates the same by reference as if set forth in full herein.

36. Said untrue statements and omissions constitute violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and of Rule 10b-5 of the Securities Exchange Commission, 17 C.F.R. § 240.10b-5.

37. By virtue of Loftsgaarden's and Alotel Incorporated's violations of Section 10(b) and of Rule 10b-5, Randall has been damaged as set forth in Counts One and Two.

Count Four

38. Randall realleges all of the allegations contained in Paragraphs 1 through 37 herein and incorporates the same by reference as if set forth in full herein.

39. Said untrue statements and omissions constitute violations of Minn. Stat. § 80A.01 and of Minn. Stat. § 80A.03.

40. By virtue of Loftsgaarden's and Alotel Incorporated's violations of Minn. Stat. § 80A.01 and of Minn. Stat. § 80A.03, thereon, Randall has been damaged as set forth in Counts One through Three.

Count Five

41. Randall realleges all of the allegations contained in Paragraphs 1 through 40 herein and incorporates the same by reference as if set forth in full herein.

42. Loftsgaarden and Alotel Incorporated, as the general partners of Alotel Associates, owed a fiduciary duty to Randall, as a limited partner of Alotel Associates, to operate Alotel Associates in a fair, just and equitable manner. As partners with fiduciary duties, Loftsgaarden and Alotel Incorporated had no right to use their power to control partnership activities to benefit themselves alone and were not permitted to act in any manner which might be detrimental to the rights of the limited partners.

43. Loftsgaarden and Alotel Incorporated breached their fiduciary duties to Randall in a number of ways, including, but not limited to, the following:

(a) Loftsgaarden and Alotel Incorporated, acting on behalf of Alotel Associates, executed a contract with 2361 for the construction of the motel building. Said contract permitted 2361 to derive a construction fee which was in excess of a fee comparable to and competitive with the fee of disinterested persons willing to render comparable services.

(b) Loftsgaarden, individually or as President and sole or controlling shareholder of PDRC, earned commissions and profits from the various real estate transactions

which culminated in the lease of the tracts of land on which the Rochester Ramada was to be built and operated to Alotel Associates.

(c) Loftsgaarden and Alotel Incorporated failed to require 2361 to remedy the defects in 2361's construction of the Rochester Ramada, including, but not limited to, deficiencies in the air conditioning-heating system and leaks in the roof and walls.

(d) Loftsgaarden and Alotel Incorporated failed to properly account for partnership funds in that they permitted cost of constructing the Rochester Ramada to be charged to Alotel Associates as operating costs and made payments of interest from partnership funds for debts incurred by entities other than Alotel Associates for projects unrelated to the activities of Alotel Associates.

(e) Loftsgaarden and Alotel Incorporated failed to close the permanent financing in a timely fashion. Said failure to close resulted in additional interest costs to Alotel Associates.

(f) Loftsgaarden and Alotel Incorporated failed to maintain financial records sufficient to permit Randall to ascertain the mismanagement and breaches of fiduciary duty by Loftsgaarden and Alotel Associates.

(g) Loftsgaarden, as President and sole or controlling stockbroker of PDRC, usurped Alotel Associates' opportunity to lease the tracts of land on which the Rochester Ramada was to be built and operated from Alvin A. Holasek and Ward E. Holasek for Thirty-Seven Thousand Two Hundred and no/100ths ($37,200.00) Dollars per year. Alotel Associates was then required to lease the tracts of

land from PDRC for Seventy Thousand Two Hundred and no/100ths ($70,200.00) Dollars per year.

44. By virtue of Loftsgaarden's and Alotel Incorporated's breaches of their fiduciary duties to Randall, Randall was damaged in the amount of Forty-two Thousand Five Hundred and no/100ths ($42,500.00) Dollars.

Count Six

45. Randall realleges all of the allegations contained in Paragraphs 1 through 44 herein and incorporates the same by reference as if set forth in full herein.

46. Loftsgaarden and Alotel Incorporated either had knowledge, or pursuant to reasonable investigation, should have had knowledge that their statements were untrue and that the facts which they omitted were necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

47. Said untrue statements and omissions concerned material facts. Randall relied on the misrepresentations and omissions made by Loftsgaarden and Alotel Incorporated.

48. By reason of the misrepresentations and omissions by Loftsgaarden and Alotel Incorporated, Randall has been damaged as set forth in Counts One through Five.

Count Seven

49. Randall realleges all of the allegations contained in Paragraphs 1 through 48 herein and incorporates the same by reference as if set forth in full herein.

50. Noah, Burg, Coult and Dunlap exercised control over Alotel Incorporated.

51. Pursuant to Section 15 of the Securities Act of 1933, 15 U.S.C. § 77, and Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a), Noah, Burg, Coult and Dunlap are liable jointly and severally with Alotel Incorporated for Alotel Incorporated's violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission.

Count Eight

52. Randall realleges all of the allegations contained in Paragraphs 1 through 51 herein and incorporates the same by reference as if set forth in full herein.

53. Noah, Burg, Coult and Dunlap controlled and were directors of Alotel Incorporated.

54. Pursuant to Minn Stat. § 80A.23, subd. 3, Noah, Burg, Coult and Dunlap are liable jointly and severally with Alotel Incorporated for Alotel Incorporated's violations of Minn. Stat. §§ 80A.01 and 80A.03.

Count Nine

55. Randall realleges all of the allegations contained in Paragraphs 1 through 54 herein and incorporates the same by reference as if set forth in full herein.

56. Touche Ross either did not believe or pursuant to reasonable investigation should not have believed that its forecast concerning income, expenses, cash flow and tax consequences of projected operations of the Rochester Ramada was reliable. Touche Ross either knew or pursuant to reasonable investigation should have known that its forecast would be used to induce persons to purchase limited partnership units in Alotel Associates.

57. Said forecast was not realiable in that:

(a) The information provided to Touche Ross upon which Touche Ross based its conclusion that the experience of certain other Ramada Inn projects could be considered comparable to the proposed Rochester Ramada was an inadequate basis upon which to rest such a conclusion.

(b) Projected expenses were grossly understated.

(c) Projected operating income and cash flow were grossly overstated.

58. Touche Ross either had knowledge or pursuant to reasonable investigation should have had knowledge that said forecast was to be included in the Offering Memordum.

59. Randall relied on the forecast prepared and supplied by Touche Ross to Loftsgaarden and Alotel Incorporated.

60. Said forecast constitutes a violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 of the Securities Exchange Commission, 17 C.F.R. § 240.10b-5.

61. By virtue of Touche Ross' violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission, Randall has been damaged as set forth in Counts One through Nine.

Count Ten

61a. Randall realleges all of the allegations contained in Paragraphs 1 through 61 herein and incorporates the same by reference as it set forth in full herein.

61b. The conduct of Loftsgaarden, Alotel Incorporated, Noah, Burg, Coult, Dunlap and Touche Ross toward Randall, including but not limited to misrepresentations and omissions, management of Alotel Associates and the construction, furnishing and operation of the Rochester Ramada and the preparation and provision of the financial forecast was negligent.

61c. By virtue of the negligence of Loftsgaarden, Alotel Incorporated, Noah, Burg, Coult, Dunlap and Touche Ross, Randall has been damaged as set forth in Counts One through Ten.

Count Eleven

62. Randall realleges all of the allegations contained in Paragraphs 1 through 61c herein and incorporates the same by reference as if set forth in full herein.

63. Loftsgaarden's conduct was willful, wanton and malicious.

64. By virtue of Loftsgaarden's willful, wanton and malicious conduct, Randall is entitled to damages in a reasonable amount. Pursuant to Minn. Stat. § 544.36 (1978) Randall alleges that amount to exceed Fifty Thousand and no/100ths ($50,000.00) Dollars.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. William C. Randall prays for judgment against Defendants Alotel Incorporated, M. S. Noah, John H. Burg, Lyman H. Coult, Robert R. Dunlap, Property Development and Research Company, 2361 Building Corporation and Touche Ross & Company,

and each of them, in the sum of Forty-Two Thousand Five Hundred and no/100ths ($42,500.00) Dollars, together with interest thereon, a reasonable attorney's fee, and Plaintiff Dr. William C. Randall's costs and disbursements herein, and against Defendant B. J. Loftsgaarden in the sum of Forty-Two Thousand Five Hundred and no/100ths ($42,-500.00) Dollars, together with interest thereon, punitive damages in a reasonable amount, a reasonable attorney's fee, and Plaintiff's costs and disbursements herein.

Dated: June — , 1980.

O'CONNOR & HANNAN

By———————

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Attorneys for Plaintiff
Dr. William C. Randall

JURY TRIAL DEMANDED

THIRD AMENDED AND SEPARATE COMPLAINT OF

DR. MYREL A. NEUMANN

DR. THOMAS W. ANDERSON

DR. ROGER E. AUSTIN

(Title Omitted in Printing)

Filed June 16, 1980

Plaintiffs DR. MYREL A. NEUMANN, DR. THOMAS W. ANDERSON and DR. ROGER E. AUSTIN, for their Complaint against Defendants, allege and state:

JURISDICTION

1. The action arises under the Securities Actof 1933, 15 U.S.C. §§ 772-7722; the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78jj; the Minnesota Uniform Securities Act, Minn. Stat. §§ 80A.01-80A.31 (1976); and the Common Law of Minnesota. The amount in controversy as to each Plaintiff exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000) Dollars.

2. Subject matter jurisdiction is invoked pursuant to 15 U.S.C. § 77v; 15 U.S.C. § 78aa; 28 U.S.C. § 1331; 28 U.S.C. § 1337; and the pendent jurisdiction of the Court.

PARTIES

3. Plaintiffs DR. MYREL A. NEUMANN, DR. THOMAS W. ANDERSON and DR. ROGER E. AUSTIN ("NEUMANN, ANDERSON and AUSTIN") were and are citizens and residents of the State of Minnesota and were purchasers of limited partnership units in Alotel Associates, a Limited Partnership organized under the laws of the State of Minnesota.

4. On information and belief, the other above-named Plaintiffs were also purchasers of limited partnership units in Alotel Associates.

5. Defendant B. J. LOFTSGAARDEN ("LOFTSGAARDEN") is a citizen and resident of the State of Minnesota. LOFTSGAARDEN organized Alotel Associates for the purpose of building, furnishing and operating a motel in Rochester ("Rochester Ramada"), pursuant to a licensing agreement with Ramada Inns, Inc. From the organization of Alotel Associates until September 17, 1975, LOFTSGAARDEN acted as one of the two general partners in Alotel Associates.

6. Defendant ALOTEL INCORPORATED ("ALOTEL INCORPORATED") is a corporation incorporated under the laws of the State of Minnesota, having its principal place of business in the State of Minnesota. From the organization of Alotel Associates until September 17, 1975, ALOTEL INCORPORATED acted as the other of the two general partners of Alotel Associates. LOFTSGAARDEN was and is President and sole or controlling shareholder of ALOTEL INCORPORATED.

7. Defendants PROPERTY DEVELOPMENT AND RESEARCH COMPANY ("PDRC"), and 2361 BUILDING CORPORATION ("2361") are corporations incorporated under the laws of the State of Minnesota, having their principal places of business in the State of Minnesota. On information and belief, LOFTSGAARDEN was and is President and sole or controlling shareholder of both PDRC and 2361.

8. Defendants M. S. NOAH, JOHN H. BURG, LYMAN H. COULT and ROBERT R. DUNLAP are other

officers and directors of said corporations and were and are citizens and residents of the State of Minnesota.

9. Defendant TOUCHE ROSS & COMPANY ("TOUCHE ROSS") is a partnership of certified public accountants operating in the State of Minnesota.

FACTUAL BACKGROUND

10. On or about April 15, 1973, LOFTSGAARDEN organized Alotel Associates for the purpose of building, furnishing and operating the Rochester Ramada.

11. On or about April 25, 1973, TOUCHE ROSS prepared and supplied LOFTSGAARDEN with an estimate of income, expenses, cash flow and tax consequences of projected operations of the Rochester Ramada for the persons purchasing limited partnership units in Alotel Associates.

12. LOFTSGAARDEN and ALOTEL INCORPORATED supplied an Offering Memorandum concerning Alotel Associates to NEUMANN between April 25 and August 21, 1973, to ANDERSON between April 25 and July, 1973 and to AUSTIN between April 25 and June 26, 1973. The Offering Memorandum contained the estimates supplied by TOUCHE ROSS. In addition, LOFTSGAARDEN and ALOTEL INCORPORATED made certain oral representations concerning Alotel Associates to NEUMANN, ANDERSON and AUSTIN.

13. On information and belief, LOFTSGAARDEN and ALOTEL INCORPORATED supplied copies of the Offering Memorandum to the other above-named Plain-

tiffs. In addition, LOFTSGAARDEN and ALOTEL INCORPORATED made oral representations of a nature similar to those made to NEUMANN, ANDERSON and AUSTIN to the other above-named Plaintiffs.

14. The Offering Memorandum was false and misleading in that it failed to disclose the following material facts:

(a) There was no disclosure of the profit that Loftsgaarden expected that he or his companies would make through the sale and lease-back of the land upon which the Rochester Ramada Inn was to be located.

(b) There was no disclosure that arc-TECH, inc. was the architect which would earn the disclosed fee of $90,000.

(c) There was no disclosure that the compensation LOFTSGAARDEN expected that he or his companies would receive as a result of the development of the Rochester Ramada Inn was not limited to the "Overhead and Profit" disclosed on page 28 of the Offering Memorandum but included other compensation and profit and was expected to be in excess of $240,000.

(d) There was no disclosure that PDRC or another of LOFTSGAARDEN'S controlled corporations would be paid a commitment fee by Alotel Associates for obtaining financing.

(e) There was no disclosure that Lyman H. Coult, a director of the corporate general partner, through Coult Mortgage Corporation would receive a commission of $25,000 for selling the property upon which the Rochester Ramada Inn was to be located.

(f) There was no disclosure that LOFTSGAARDEN had attempted unsuccessfully to organize Alotel Associates using a different Offering Memorandum and no disclosure of the risks associated with the reorganization of the limited partnership.

(g) There was no disclosure that Paul Crawford, who had been engaged by LOFTSGAARDEN to sell limited partnership units of Alotel Associates, was not licensed to do so.

(h) There was no disclosure that One Hundred Thousand and no/100ths ($100,000.00) Dollars would not be a sufficient amount of capital to provide a reserve for initial operating expenses.

15. The Offering Memorandum was false and misleading in the following particulars:

(a) The Offering Memorandum disclosed on page 6 that interim construction financing would be obtained at a rate of 9½% per year but did not disclose that the rate of construction loan interest would actually float at 4% over the prime rate charged by the First National Bank of St. Paul.

(b) The Offering Memorandum disclosed on page 28 the total expected construction loan interest but did not disclose that this expectation depended upon the prime rate remaining constant at 5½% per year and construction being completed in only seven months on December 31, 1973.

(c) The Offering Memorandum disclosed on page 6 that the land on which the Rochester Ramada Inn was to be built was leased for an initial term of 40 years with renewal options extending thereafter but no such lease in fact existed and no lease entered into subsequently contained the terms disclosed by the Offering Memorandum.

(d) The Offering Memorandum disclosed on page 32 that construction of the project would begin in May of 1973 and would be completed by December, 1973 and did not disclose that LOFTSGAARDEN and his companies expected that construction would take at least one year.

(e) The Offering Memorandum disclosed on page 33 that $240,000 would be obtained on five-year

notes with interest at 8% but did not disclose that such a loan would be secured by a chattel mortgage of the furniture and fixtures of the Rochester Ramada Inn and did not disclose that the rate of interest would actually float at 3% over the prime rate.

(f) The Offering Memorandum disclosed on page 6 that long term financing of the project had been obtained from Larwin Realty & Mortgage Trust at the rate of 9½% per annum but did not disclose that Alotel Associates could not, without using a nominee, make use of this commitment because the interest rate was usurious. It was also not disclosed that the risk that the long term loan would be found to be usurious was so substantial that the long term lender could refuse to honor its commitment without extensive assurance of the safety of its loan all at substantial and undisclosed cost to Alotel Associates.

(g) The budgets and forecasts contained in the Offering Memorandum beginning at page 24 were based upon assumptions and rationale that were not reasonable and not misleading in light of the facts known to LOFTSGAARDEN and his companies.

(h) The Offering Memorandum disclosed on page 5 that Alotel Associates would enter into a fixed fee construction contract with a construction company owned or controlled by persons owning or controlling ALOTEL INCORPORATED for the construction and furnishing of the Rochester Ramada Inn for a total expenditure of $3,150,000 but no such contract for such a fixed fee was ever entered into.

(i) The Offering Memorandum disclosed on page 7 the identity of the officers and directors of ALOTEL INCORPORATED but did not disclose that all had not agreed to become active directors and officers nor did it disclose that ALOTEL INCORPORATED had not been and would not be funded and was not intended by LOFTSGAARDEN to ever be an active and financially responsible general partner.

(j) The offering Memorandum disclosed on page 17 that it would not be registered with the State of Minnesota or with the Securities and Exchange Commission but did not disclose that avoiding Registration meant that the Commissioner of Securities of the State of Minnesota would not pass upon whether the Offering Memorandum would be fair and equitable as required by Minnesota law when such memoranda are submitted for registration and that the Offering would not have been passed if submitted to the Security Commissioner because it was inconsistent with the disclosure and fairness rules followed by the Commissioner.

16. On or about August 21, 1973, in response to a solicitation from and an offer to sell by LOFTSGAARDEN and ALOTEL INCORPORATED, and in reliance on representations made in the Offering Memorandum and otherwise, Plaintiff NEUMANN subscribed to purchase one (1) limited partnership unit in Alotel Associates for Thirty-five Thousand ($35,000) Dollars. On or about August 22, 1973, NEUMANN made payment of Fourteen Thousand ($14,000) Dollars of the purchase price. On or about October 19, 1973, NEUMANN subscribed to purchase an additional one half (½) partnership unit for Seventeen Thousand Five Hundred ($17,500) Dollars and paid that sum on or about October 9, 1973.

17. In or about July, 1973, in response to a solicitation from and an offer to sell by LOTTSGAARDEN and ALOTEL INCORPORATED, and in reliance on representations made in the Offering Memorandum and otherwise, Plaintiff ANDERSON subscribed to purchase one (1) limited partnership unit in Alotel Associates for Thirty-five Thousand ($35,000) Dollars. The full price for said unit was paid shortly thereafter.

18. On or about June 26, 1973, in response to a solicitation from and an offer to sell by LOFTSGAARDEN and ALOTEL INCORPORATED, and in reliance on representations made in the Offering Memorandum and otherwise, Plaintiff AUSTIN subscribed to purchase one (1) limited partnership unit in Alotel Associates for Thirty-five Thousand ($35,000) Dollars. AUSTIN made payment of the purchase price, in or before October, 1973.

19. On information and belief, the other above-named Plaintiffs also purchased limited partnership units in Alotel Associates.

20. During February and March, 1975, LOFTSGAARDEN and ALOTEL INCORPORATED communicated on behalf of Alotel Associates to NEUMANN that Alotel Associates was experiencing cash flow problems, that NEUMANN's partnership interest was in jeopardy, and that those problems could be resolved and NEUMANN's partnership interest protected if NEUMANN and each other holder of a limited partnership unit would contribute at least an additional Three Thousand Five Hundred ($3,500) Dollars and up to Eight Thousand ($8,000) Dollars per unit to Alotel Associates before May 31, 1975.

21. During March, 1975, LOFTSGAARDEN and ALOTEL INCORPORATED communicated on behalf of ALOTEL INCORPORTED to ANDERSON that Alotel Associates was experiencing cash flow problems, that ANDERSON's partnership interest was in jeopardy, and that those problems could be resolved and ANDERSON's partnership interest protected if ANDERSON and each other holder of a limited partnership unit would contribute at least an additional Three Thousand Five Hundred ($3,500)

Dollars and up to Eight Thousand ($8,000) Dollars per unit to Alotel Associates before May 31, 1975.

22. During February or March, 1975, LOFTSGAARDEN and ALOTEL INCORPORATED communicated on behalf of Alotel Associates to AUSTIN that Alotel Associates was experiencing cash flow problems, that AUSTN's partnership interest was in jeopardy, and that those problems could be resolved and AUSTIN's partnership interest protected if AUSTIN and each other holder of a limited partnership unit would contribute at least an additional Three Thousand Five Hundred ($3,500) Dollars and up to Eight Thousand ($8,000) Dollars per unit to Alotel Associates before May 31, 1975.

23. Those representations were false and misleading in that the contribution of Eight Thousand ($8,000) Dollars per unit by each holder of a limited partnership unit would not be and was not sufficient to resolve the cash flow problems of Alotel Associates or to protect NEUMANN's, ANDERSON's and AUSTIN's financial interests.

24. In response to and reliance upon the February and March, 1975 communications from LOFTSGAARDEN and ALOTEL INCORPORATED, NEUMANN, ANDERSON and AUSTIN each contributed additional monies to Alotel Associates. NEUMANN contributing Five Thousand Two Hundred Fifty ($5,250) Dollars on April 12, 1975, ANDERSON contributed Three Thousand Five Hundred ($3,500) Dollars on April 25, 1975, and AUSTIN contributed Three Thousand Five Hundred ($3,500) Dollars on March 19, 1975.

25. On information and belief, the other above-named Plaintiffs made similar contributions.

26. During May, 1975 LOFTSGAARDEN and ALOTEL INCORPORATED communicated on behalf of Alotel Associates to NEUMANN that Alotel Associates was experiencing additional cash flow problems, that NEUMANN's partnership interest was in jeopardy and that those problems could be resolved and NEUMANN's partnership interest protected, if NEUMANN and each other holder of a limited partnership unit would contribute an additional Twenty-Five Hundred ($2,500) Dollars per unit to Alotel Associates.

27. During May, 1975, LOFTSGAARDEN and ALOTEL INCORPORATED communicated on behalf of Alotel Associates to ANDERSON that Alotel Associates was experiencing additional cash flow problems, that ANDERSON's partnership interest was in jeopardy, and that those problems could be resolved and ANDERSON's partnership interest protected, if ANDERSON and each other holder of a limited partnership unit would contribute an additional Two Thousand Five Hundred ($2,500) Dollars per unit to Alotel Associates.

28. During May, 1975, LOFTSGAARDEN and ALOTEL INCORPORATED communicated on behalf of Alotel Associates to AUSTIN that Alotel Associates was experiencing additional cash flow problems, that AUSTIN's partnership interest was in jeopardy, and that those problems could be resolved and AUSTIN's partnership interest protected, if AUSTIN and each other holder of a limited partnership unit would contribute an additional Two Thousand Five Hundred ($2,500) Dollars per unit to Alotel Associates.

29. Those representations were false and misleading in that the contribution of Two Thousand Five Hundred

($2,500) Dollars per unit by each holder of a limited partnership unit would not be and was not sufficient to resolve the cash flow problems of Alotel Associates or to protect NEUMANN's, ANDERSON's and AUSTIN's financial interests.

30. In response to and reliance upon the May, 1975 communications from LOFTSGAARDEN and ALOTEL INCORPORATED, NEUMANN, ANDERSON and AUSTIN each contributed additional monies to Alotel Associates. NEUMANN contributing One Thousand Five Hundred ($1,500) Dollars on May 30, 1975, ANDERSON contributed One Thousand ($1,000) Dollars during August, 1975, and AUSTIN contributed One Thousand ($1,000) Dollars on or about June 6, 1975.

31. On information and belief, the other above-named Plaintiffs made similar contributions.

32. In response to and reliance upon the February, March and May, 1975 communications from LOFTSGAARDEN and ALOTEL INCORPORATED and in response to communications from others on behalf of Alotel Associates, NEUMANN, ANDERSON and AUSTIN each contributed additional monies to Alotel Associates. NEUMANN contributed One Thousand Eight Hundred Seventy-Five ($1,875) Dollars on September 26, 1975; Two Thousand Two Hundred Fifty ($2,250) Dollars on October 31, 1975; One Thousand Eight Hundred Seventy Five ($1,875) Dollars on December 15, 1975 and Six Thousand ($6,000) Dollars on April 3, 1976. ANDERSON contributed One Thousand Two Hundred Fifty ($1,250) Dollars on September 29, 1975; One Thousand Five Hundred ($1,500) Dollars on October 28, 1975; and One Thousand Two Hun-

dred Fifty ($1,250) on December 31, 1975. AUSTIN contributed One Thousand Two Hundred Fifty ($1,250) Dollars on September 24, 1975; One Thousand Five Hundred ($1,500) Dollars on November 5, 1975; One Thousand Two Hundred Fifty ($1,250) Dollars in December, 1975.

33. On information and belief the other above named Plaintiffs made other or similar contributions.

COUNT ONE

34. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 33 herein and incorporate the same by reference as if set forth in full herein.

35. LOFTSGAARDEN and ALOTEL INCORPORATED offered to sell and sold one (1) limited partnership unit to NEUMANN, ANDERSON and AUSTIN by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails.

36. LOFTSGAARDEN and ALOTEL INCORPORATED either had knowledge or, pursuant to reasonable investigation, should have had knowledge of said untrue statements and omissions.

37. LOFTSGAARDEN and ALOTEL INCORPORATED fraudulently concealed their untrue statements and omissions by making additional untrue statements and omissions.

38. NEUMANN, ANDERSON and AUSTIN each diligently examined all financial statements and other materials provided to them by LOFTSGAARDEN and ALO-

TEL INCORPORATED and questioned LOFTSGAARDEN and ALOTEL INCORPORATED about the financial condition of Alotel Associates. LOFTSGAARDEN and ALOTEL INCORPORATED continued to reassure NEUMANN, ANDERSON and AUSTIN that their earlier statements to them were true and that their projections would prove to be true. NEUMANN, ANDERSON and AUSTIN accepted those reassurances.

39. NEUMANN, ANDERSON and AUSTIN in conjunction with other above-named Plaintiffs and limited partners of Alotel Associates also retained attorneys and accountants to review the materials provided to them by LOFTSGAARDEN and ALOTEL INCORPORATED to better enable them to question LOFTSGAARDEN and ALOTEL INCORPORATED about the financial condition of Alotel Associates.

40. NEUMANN, ANDERSON and AUSTIN each relied on each of said untrue statements and omissions.

41. Said untrue statements and omissions constitute violations of Section 12(2) of the Securities Act of 1933, 15 U.S.C. § 77.

42. NEUMANN, ANDERSON and AUSTIN discovered that the statements were untrue or that LOFTSGAARDEN and ALOTEL INCORPORATED had failed to state material facts on or after September 10, 1975.

43. On or about September 10, 1975, the attorneys for the limited partners of Alotel Associates wrote them including NEUMANN, ANDERSON and AUSTIN to advise them that matters brought to their attention in the previous week might form the basis for what became the instant action.

44. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's violations of Section 12(2), NEUMANN has been damaged in the amount of Sixty Five Thousand Two Hundred Fifty ($65,250) Dollars.

45. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's violation of Section 12(2), ANDERSON has been damaged in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars.

46. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's violations of Section 12(2), AUSTIN has been damaged in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars.

COUNT TWO

47. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 46 herein and incorporate the same by reference as if set forth in full herein.

48. Said untrue statements and omissions constitute violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and of Rule 10b-5 of the Securities Exchange Commission, 17 C.F.R. § 240.10b-5.

49. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's violations of Section 10(b) and of Rule 10b-5, NEUMANN, ANDERSON and AUSTIN have each been damaged as set forth in Count One.

COUNT THREE

50. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs

1 through 49 herein and incorporate the same by reference as if set forth in full herein.

51. Said untrue statements and omissions constitute violations of Minn. Stat. § 80A.01 and of Minn. Stat. § 80A.03.

52. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's violations of Minn. Stat. §80A.01 and of Minn. Stat. §80A.03, thereon, NEUMANN, ANDERSON and AUSTIN have been damaged as set forth in Counts One and Two.

COUNT FOUR

53. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 52 herein and incorporate the same by reference as if set forth in full herein.

54. LOFTSGAARDEN and ALOTEL INCORPORATED, as the general partners of Alotel Associates, owed a fiduciary duty to NEUMANN, ANDERSON and AUSTIN, as limited partners of Alotel Associates, to operate Alotel Associates in a fair, just and equitable manner. As partners with fiduciary duties, LOFTSGAARDEN and ALOTEL INCORPORATED had no right to use their power to control partnership activities to benefit themselves alone and were not permitted to act in any manner which might be detrimental to the rights of the limited partners.

55. LOFTSGAARDEN and ALOTEL INCORPORATED breached their fiduciary duties to the limited partners by among other things:

(a) LOFTSGAARDEN and ALOTEL INCORPORATED, acting on behalf of Alotel Associates, exe-

cuted a contract with 2361 for the construction of the motel building. Said contract permitted 2361 to derive a construction fee which was in excess of a fee comparable to and competitive with the fee of disinterested persons willing to render comparable services.

(b) LOFTSGAARDEN, individually or as President and sole or controlling shareholder of PDRC, earned commissions and profits from the various real estate transactions which culminated in the lease of the tracts of land on which the Rochester Ramada was to be built and operated to Alotel Associates.

(c) LOFTSGAARDEN and ALOTEL INCORPORATED failed to require 2361 to remedy the defects in 2361's construction of the Rochester Ramada, including, but not limited to, deficiencies in the air-conditioning/heating system and leaks in the roof and walls.

(d) LOFTSGAARDEN and ALOTEL INCORPORATED failed to properly account for partnership funds in that they permitted the cost of constructing the Rochester Ramada to be charged to Alotel Associates as operating costs and made payments of interest from partnership funds for debts incurred by entities other than Alotel Associates for projects unrelated to the activities of Alotel Associates.

(e) LOFTSGAARDEN and ALOTEL INCORPORATED failed to close the permanent financing in a timely fashion. Said failure to close resulted in additional interest costs to Alotel Associates.

(f) LOFTSGAARDEN and ALOTEL INCORPORATED failed to maintain financial records sufficient to permit NEUMANN, ANDERSON and AUSTIN to ascertain the mismanagement and breaches of fiduciary duty by LOFTSGAARDEN and Alotel Associates.

(g) LOFTSGAARDEN, as President and sole or controlling stockholder of PDRC, usurped Alotel

Associates' opportunity to lease the tracts of land on which the Rochester Ramada was to be built and operated from Alvin A. Holasek and Ward E. Holasek for Thirty-seven Thousand Two Hundred ($37,200) Dollars per year. Alotel Associates was then required to lease the tracts of land from PDRC for Seventy Thousand Two Hundred ($70,200) Dollars per year.

56. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's breaches of their fiduciary duties to NEUMANN, NEUMANN was damaged in the amount of Sixty-five Thousand Two Hundred Fifty ($65,250) Dollars.

57. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's breaches of their fiduciary duties to ANDERSON, ANDERSON was damaged in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars.

58. By virtue of LOFTSGAARDEN's and ALOTEL INCORPORATED's breaches of their fiduciary duties to AUSTIN, AUSTIN was damaged in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars.

COUNT FIVE

59. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 58 herein and incorporate the same by reference as if set forth in full herein.

60. LOFTSGAARDEN and ALOTEL INCORPORATED either had knowledge, or pursuant to reasonable investigation, should have had knowledge that their statements were untrue and that the facts which they omitted were necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

61. Said untrue statements and omissions concerned material facts. NEUMANN, ANDERSON and AUSTIN each relied on the misrepresentations and omissions made by LOFTSGAARDEN and ALOTEL INCORPORATED.

62. By reason of the misrepresentations and omissions by LOFTSGAARDEN and ALOTEL INCORPORATED, NEUMANN, ANDERSON and AUSTIN have been damaged as set forth in Counts One through Four.

COUNT SIX

63. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 62 herein and incorporate the same by reference as if set forth in full herein.

64. Defendants NOAH, BURG, COULT and DUNLAP exercised control over ALOTEL INCORPORATED.

65. Pursuant to Section 15 of the Securities Act of 1933, 15 U.S.C. § 77, and Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a), NOAH, BURG, COULT and DUNLAP are liable jointly and severally with ALOTEL INCORPORATED for ALOTEL INCORPORATED's violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission, as set forth in Counts One and Two herein.

COUNT SEVEN

66. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 65 herein and incorporate the same by reference as if set forth in full herein.

67. Defendants NOAH, BURG, COULT and DUNLAP controlled ALOTEL INCORPORATED.

68. Pursuant to Minn. Stat. § 80A.23, subd. 3, NOAH, BURG, COULT and DUNLAP are liable jointly and severally with ALOTEL INCORPORATED for ALOTEL INCORPORATED's violations of Minn. Stat. §§ 80A.01 and 80A.03, as set forth in Count Three herein.

COUNT EIGHT

69. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 72 herein and incorporate the same by reference as if set forth in full herein.

70. TOUCHE ROSS either did not believe, or pursuant to reasonable investigation, should not have believed that its estimates of income, expenses, cash flow and tax consequences of projected operations of the Rochester Ramada, which it knew or should have known would be used to induce persons to purchase limited partnership units in Alotel Associates, were reliable.

71. Said forecast was not reliable in that:

(a) The information provided to TOUCHE ROSS, upon which TOUCHE ROSS based its conclusion that the experience of certain other Ramada Inn projects could be considered comparable to the proposed Rochester Ramada was an inadequate basis upon which to rest such a conclusion.

(b) Project expenses were grossly understated.

(c) Projected operating income and cash flow were grossly overstated.

72. TOUCHE ROSS either had knowledge, or pursuant to reasonable investigation, should have had knowl-

edge, that said forecast was to be included in the Offering Memorandum.

73. NEUMANN, ANDERSON and AUSTIN relied on the forecast prepared and supplied by TOUCHE ROSS to LOFTSGAARDEN and ALOTEL INCORPORATED.

74. Said forecast constitutes a violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 of the Securities Exchange Commission, 17 C.F.R. § 240.10b-5.

75. By virtue of TOUCHE ROSS' violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission, NEUMANN, ANDERSON and AUSTIN have been damaged as set forth in Counts One through Five.

COUNT NINE

76. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 75 herein and incorporate the same by reference.

77. The conduct of Defendants toward Plaintiffs NEUMANN, ANDERSON and AUSTIN, including, but not limited to misrepresentations and omissions, the management of Alotel Associates and the Ramada Inn construction and operations, and the provision of financial data, as described in Paragraphs 1 through 75 herein, was negligent.

78. As a direct and proximate result of Defendants' said negligence, Plaintiffs have been damaged as alleged in Counts One through Eight.

COUNT TEN

79. Plaintiffs NEUMANN, ANDERSON and AUSTIN reallege all of the allegations contained in Paragraphs 1 through 78 herein and incorporate the same by reference as it set forth in full herein.

80. LOFTSGAARDEN's conduct was willful, wanton and malicious.

81. By virtue of LOFTSGAARDEN's willful, wanton and malicious conduct, NEUMANN, ANDERSON and AUSTIN are entitled to punitive damages at least in the amount of Two Hundred Thousand ($200,000) Dollars.

WHEREFORE, Plaintiffs NEUMANN, ANDERSON and AUSTIN pray for judgment as follows:

1. Against Defendants ALOTEL INCORPORATED, M. S. NOAH, JOHN H. BURG, LYMAN H. COULT, ROBERT R. DUNLAP, PROPERTY DEVELOPMENT & RESEARCH COMPANY, 2361 BUILDING CORPORATION and TOUCHE ROSS & COMPANY, and each of them, judgment for Plaintiff NEUMANN, in the amount of Sixty-five Thousand Two Hundred Fifty ($65,250) Dollars, together with interest thereon, reasonable attorneys' fees, and costs and disbursements.

2. Against Defendants ALOTEL INCORPORATED, M. S. NOAH, JOHN H. BURG, LYMAN H. COULT, ROBERT R. DUNLAP, PROPERTY DEVELOPMENT & RESEARCH COMPANY, 2361 BUILDING CORPORATION and TOUCHE ROSS & COMPANY, and each of them, judgment for Plaintiff ANDERSON, in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars, together with interest thereon, reasonable attorneys' fees, and costs and disbursements herein.

3. Against Defendants ALOTEL INCORPORATED, M. S. NOAH, JOHN H. BURG, LYMAN H. COULT, ROBERT R. DUNLAP, PROPERTY DEVELOPMENT & RESEARCH COMPANY, 2361 BUILDING CORPORATION and TOUCHE ROSS & COMPANY, and each of them, judgment for Plaintiff AUSTIN, in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars, together with interest thereon, reasonable attorneys' fees, and costs and disbursements herein.

4. Against Defendant B. J. LOFTSGAARDEN, judgment for Plaintiff NEUMANN, in the amount of Sixty-five Thousand Two Hundred Fifty ($65,250) Dollars, together with interest thereon, punitive damages in a reasonable amount, reasonable attorneys' fees, and costs and disbursements herein.

5. Against Defendant B. J. LOFTSGAARDEN, judgment for Plaintiff ANDERSON, in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars, together with interest thereon, punitive damages in a reasonable amount, reasonable attorneys' fees, and costs and disbursements herein.

6. Against Defendant B. J. LOFTSGAARDEN, judgment for Plaintiff AUSTIN, in the amount of Forty-three Thousand Five Hundred ($43,500) Dollars, together with interest thereon, punitive damages in a reasonable amount, reasonable attorneys' fees, and costs and disbursements herein.

7. Such other relief as the Court may deem just and appropriate.

DATED: June 12, 1980.

FREDRIKSON, BYRON,
COLBORN, BISBEE &
HANSEN, P.A.

By /s/ Terence M. Fruth

By /s/ John A. Grimstad

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Dr. Myrel A. Neumann

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

JOINT & SEPARATE ANSWER AND COUNTERCLAIM OF DEFENDANTS TO THE THIRD AMENDED AND SEPARATE COMPLAINT OF PLAINTIFF RANDALL.

Filed June 16, 1980

[Title Omitted in Printing]

The defendants above-named, for their Answer to the Third Amended and Separate Complaint of Dr. William C. Randall, state:

1. Deny the allegations set forth in paragraphs 1 and 2.

2. Admit the allegations set forth in paragraph 3.

3. Admit the allegations set forth in paragraph 4, except as to plaintiff, John S. Hall, which allegation is denied.

4. Admit that B. J Loftsgaarden is a citizen and resident of Minnesota and that B. J. Loftsgaarden organized Alotel Associates for the purpose of building, furnishing and operating a motel in Rochester, Minnesota, to be known as the Rochester Ramada, but deny each and every other allegation set forth in paragraph 5.

5. Admit the allegations set forth in paragraph 6, except as to the effective date upon which Alotel, Incorporated ceased to act as a general partner of Alotel Associates, which allegation is denied.

6. Admit the allegations set forth in paragraph 7.

7. Deny the allegations set forth in paragraph 8.

8. Admit the allegations set forth in paragraphs 9 and 10.

9. Admit the allegations set forth in paragraph 11, except to the extent that such allegations modify or vary the written forecast prepared by Touche Ross & Co. and made a part of the offering memorandum.

10. Admit the allegations set forth in paragraph 12, except as to the allegations that Loftsgaarden and Alotel, Incorporated made certain oral representations concerning Alotel Associates to Randall, which allegations are denied.

11. Admit the allegations set forth in paragraph 13, except as to the allegations that Loftsgaarden and Alotel Incorporated made oral representations of a nature similar to those made to Randall to the other above-named plaintiffs, which allegations are denied.

12. Deny the allegations set forth in paragraphs 14 and 15.

13. Admit that Randall subscribed to and purchased one limited partnership unit in Alotel Associates for the sum of $35,000, but deny each and every other allegation set forth in paragraph 16.

14. Admit the allegations set forth in paragraph 17, except as to plaintiff, John S. Hall, which allegation is denied.

15. Admit that Alotel Associates experienced cash flow problems in March, 1975, but deny each and every other allegation set forth in paragraph 18.

16. Deny the allegations set forth in paragraphs 19 and 20.

17. Lack information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph 21.

18. Admit that Alotel Associates was experiencing cash flow problems in May, 1975, but deny each and every other allegation set forth in paragraph 22.

19. Deny the allegations set forth in paragraphs 23 and 24.

20. Lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 24a.

21. Deny the allegations set forth in paragraph 24b.

22. Lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 25.

23. Admit or deny, as stated above in paragraphs 1 to 22 of this Answer, the allegations contained in paragraphs 1 to 25 of the Complaint as realleged in paragraph 26 of the Complaint.

24. Deny the allegations set forth in paragraphs 27, 28, 28a, 28b, 29, 30, 30a, 30b, 30c, 30d, and 31.

AS TO COUNT TWO:

25. Admit or deny, as stated above in paragraphs 1 to 24 of this Answer, the allegations contained in paragraphs 1 to 31 of the Complaint as realleged in paragraph 32 of the Complaint.

26. Deny the allegations set forth in paragraphs 33 and 34.

AS TO COUNT THREE:

27. Admit or deny, as stated above in paragraphs 1 to 26 of this Answer, the allegations set forth in paragraphs 1 to 34 of the Complaint as realleged in paragraph 35 of the Complaint.

28. Deny the allegations set forth in paragraphs 36 and 37.

AS TO COUNT FOUR:

29. Admit or deny, as stated above in paragraphs 1 to 28 of this Answer, the allegations contained in paragraphs 1 to 37 of the Complaint as realleged in paragraph 38 of the Complaint.

30. Deny the allegations set forth in paragraphs 39 and 40.

AS TO COUNT FIVE:

31. Admit or deny, as stated above in paragraphs 1 to 30 of this Answer, the allegations set forth in paragraphs 1 to 40 of the Complaint as realleged in paragraph 41 of the Complaint.

32. Deny the allegations set forth in paragraphs 42, 43, and 44.

AS TO COUNT SIX:

33. Admit or deny, as stated above in paragraphs 1 to 32 of this Answer, the allegations set forth in paragraphs 1 to 44 of the Complaint as realleged in paragraph 45 of the Complaint.

34. Deny the allegations set forth in paragraphs 46, 47 and 48.

AS TO COUNT SEVEN:

35. Admit or deny, as stated above in paragraphs 1 to 34 of this Answer, the allegations set forth in paragraphs 1 to 48 of the Complaint as realleged in paragraph 49 of the Complaint.

36. Deny the allegations set forth in paragraphs 50 and 51.

AS TO COUNT EIGHT:

37. Admit or deny, as stated above in paragraphs 1 to 36 of this Answer, the allegations set forth in paragraphs 1 to 51 of the Complaint as realleged in paragraph 52 of the Complaint.

38. Deny the allegations set forth in paragraphs 53 and 54.

AS TO COUNT NINE:

39. Admit or deny, as stated above in paragraphs 1 to 38 of this Answer, the allegations set forth in paragraphs 1 to 54 of the Complaint as realleged in paragraph 55 of the Complaint.

40. Lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 56.

41. Deny the allegations set forth in paragraph 58.

43. Deny the allegations set forth in paragraphs 59, 60 and 61.

AS TO COUNT TEN:

44. Admit or deny, as stated above in paragraphs 1 to 43 of this Answer, the allegations set forth in para-

graphs 1 to 61 of the Complaint as realleged in paragraph 61a of the Complaint.

45. Deny the allegations set forth in paragraphs 61b and 61c.

AS TO COUNT ELEVEN:

46. Admit or deny, as stated above in paragraphs 1 to 45 of this Answer, the allegations set forth in paragraphs 1 through 61 of the Complaint as realleged in paragraph 62 of the Complaint.

47. Deny the allegations set forth in paragraph 63 and 64.

AFFIRMATIVE DEFENSES

48. The Complaint fails to state the claim upon which relief may be granted.

49. The Court lacks jurisdiction over the subject matter.

50. The Court lacks jurisdiction over the person of one or more of the defendants.

51. Defendants have fully performed all the terms and conditions of that certain stipulation of settlement and settlement agreement entered into between defendants and Alotel Associates, on its own behalf and on behalf of all plaintiffs, including Dr. William C. Randall, now on file and of record on that certain consolidated action in the District Court, Third Judicial District, County of Olmsted, State of Minnesota, entitled the *First National Bank of Rochester v. Property Development and Research Company, et al,* File No. 40449, and *United Realty Trust v. Property Development and Research Company, et al,*

File No. 40375, and plaintiff received and accepted the same in full satisfaction and discharge of any and all claims which he has or may have for damages purportedly sustained by plaintiff by reason of the acts alleged in his separate complaint.

52. Plaintiff had knowledge of and assumed the risks incident to his purchase of a limited partnership unit in Alotel Associates and the damages alleged by plaintiff were caused by and arose of such risks.

53. Whatever damages were sustained by plaintiff as a result of his purchase of a limited partnership unit in Alotel Associates were caused in whole or in part, or contributed to by reason of the negligent acts or omissions of plaintiff.

54. Plaintiff lacks standing to pursue the claims asserted in his separate complaint by reason of his active involvement in the management and conduct of the affairs of Alotel Associates and the operation of the Rochester Ramada.

55. Plaintiff is estopped, by reason of his assumption, together with the assumption by all other plaintiffs in this action, of the duties of the general partner of Alotel Associates and the subsequent stipulation of settlement and settlement agreement alleged above, from asserting the claims set forth in his separate complaint.

56. On information and belief, plaintiff fraudulently induced defendants to sell to him a limited partnership unit of Alotel Associates by misrepresentation of his suitability as an investor in Alotel Associates in accordance with the standards set forth in the Offering Memorandum.

57. Plaintiff, together with all other individual plaintiffs in this action who purchased limited partnership units of Alotel Associates, delivered to defendants for valuable consideration a general release contained in the stipulation of settlement and settlement agreement whereby plaintiff duly released defendants or forever discharged them from any and all claims arising out of or related to his investment in Alotel Associates as a Limited Partner, including the claims alleged in his separate complaint.

58. Plaintiff's claims are barred by various applicable statutes of limitations.

59. Defendants B. J. Loftsgaarden and Alotel Incorporated's performance as general partners of Alotel Associates, the failure of which is alleged in the separate complaint, was made impossible by various intervening forces over which the defendants had no control, including their removal as general partners of Alotel Associates and unfavorable economic conditions.

COUNTERCLAIM

Defendants B. J. Loftsgaarden and Alotel, Inc., for their separate counterclaim against plaintiff, William C. Randall, state:

JURISDICTION

Subject matter jurisdiction is based upon the pendent jurisdiction of this Court and the matter in controversy exceeds the sum of $10,000, exclusive of interests and costs.

COUNT ONE

60. Defendants reallege each allegation of the separate complaint of William C. Randall which has been admitted by defendants as stated above in paragraphs 1 to 59 of their Answer.

61. On or about November 13, 1973 plaintiff purchased one limited partnership unit in Alotel Associates, a limited partnership duly organized under the laws of the State of Minnesota.

62. Prior to purchasing the said limited partnership unit, plaintiff represented to defendants that he was suitable as an investor in Alotel Associates and that he complied with the investor's suitability standards set forth in the offering memorandum, i.e., plaintiff represented that he had a net worth in excess of $200,000 (excluding home and automobiles) or that some portion of his income was subject to state and federal income taxes at a rate of 50% or more.

63. On information and belief, the foregoing representations made by plaintiff as to his suitability as an investor in Alotel Associates were false.

64. In reliance upon said misrepresentations, defendants sold one limited partnership unit to plaintiff for the consideration of $35,000.00.

65. During the course of development, construction and operation of the Ramada Inn project by Alotel Associates, plaintiff interfered with and otherwise obstructed management and conduct of the affairs of Alotel Associates and the performance and discharge of the duties and obligations of defendants as general partners of Alotel

Associates. Such acts of interference and obstruction of the development, construction and operation of the Ramada Inn project by Alotel Associates and the performance and discharge of the various duties and obligations of defendants as general partners were caused by plaintiff's unsuitability as an investor and were committed by plaintiff with malice aforethought and with the intent to injure and otherwise harm defendants.

66. As a result of the foregoing acts and omissions of plaintiff, defendants incurred additional liabilities and suffered other damages, including the loss of contracts, in connection with their investment in Alotel Associates as the developer of the Ramada Inn project and as the general partners of Alotel Associates.

67. As a result of the foregoing, defendants are entitled to compensatory damages in the sum of $200,000 and punitive damages in the sum of $500,000.00.

COUNT TWO

68. Paragraphs 60 and 67 of Count One of this Counterclaim are re-alleged in their entirety.

69. During the summer of 1975 and, in no event, later than September 17, 1975, plaintiff became actively involved in and assumed responsibility for the daily operation and management of the Ramada Inn project owned by Alotel Associates and the conduct of the general affairs of Alotel Associates. During such period of time, and at the instigation and insistence of plaintiff, defendants were removed as general partners of Alotel Associates and ceased all active involvement in the management and operation of the Ramada Inn project.

70. By reason of their involvement in the development, construction and operation of the Ramada Inn project for Alotel Associates, defendants invested substantial amounts of money and time and thereby conferred substantial benefits upon Alotel Associates for which defendants are entitled to be compensated.

71. Plaintiff knew or should have known that defendants had conferred substantial benefits upon Alotel Associates for which they are entitled to compensation.

72. Plaintiff negligently and recklessly, and with wanton disregard of defendants' rights as developer and former general partners of Alotel Associates, managed the affairs of and operated the Ramada Inn project in such a manner as to waste the assets of Alotel Associates, lose substantial profits in the Ramada Inn project, and ultimately place the entire Ramada Inn project in default, whereupon foreclosure proceedings were commenced and the project taken over by the project's permanent lenders, including, but not limited to the First National Bank of Rochester and United Realty Trust.

73. As a result of the foregoing negligent acts and omission of plaintiffs, defendants were damaged in the sum of not less than $200,000.00.

COUNT THREE

74. On or about December 20, 1976, defendants and plaintiff entered into an agreement whereby defendants agreed to dismiss that certain unlawful detainer action then pending in Olmsted County Court, State of Minnesota, and to perform certain other duties and acts, in consideration for which Alotel Associates and each of

its individual partners, including plaintiff, agreed to release and forever discharge defendants from any and all claims which they had or may have had, now or in the future, arising out of or related to their investments in Alotel Associates and that certain project known as the Rochester Ramada Inn, including the claims asserted by plaintiff in this action.

75. Defendants, and each of them, fully performed each and every term and condition of such agreement required on its part, including the payment of monies to various creditors of Alotel Associates and the conveyance of any and all interests which defendants had or may have had in the Rochester Ramada Inn and the real property upon which it is situated to Alotel Associates for its benefit and for the benefit of its individual partners, including plaintiff.

76. Defendants performed such terms and conditions on its part in reliance upon the promises of Alotel Associates and its individual partners, including plaintiff, to fully perform the terms and conditions required by such agreement on their part, including without limitation the full and final release and discharge of defendants from all claims and causes of action as alleged above.

77. Plaintiff has refused and otherwise failed to perform on its part such terms and conditions and has breached said agreement.

78. As a result of plaintiff's breach of said agreement, defendants have been damaged in an amount not less than $120,000, including attorneys' fees necessarily incurred as a result of such breach.

WHEREFORE, the defendants demand judgment against plaintiff as follows:

1. Dismissing with prejudice the Separate Complaint of William C. Randall;

2. Awarding to defendants B. J. Loftsgaarden and Alotel, Inc. compensatory damages in the amount of $200,000.00;

3. Awarding to defendants B. J. Loftsgaarden and Alotel, Inc. damages in the amount of $120,000.00;

4. Awarding to defendants B. J. Loftsgaarden and Alotel, Inc. punitive damages in the amount of $500,000;

5. Awarding to defendants their costs and disbursements, including attorneys' fees; and

6. Granting to defendants such other and further relief as the court deems just and equitable.

MEAGHER, GEER, MARKHAM,
ANDERSON, ADAMSON,
FLASKAMP & BRENNAN

By /s/ Clyde F. Anderson
Attorneys for Defendants
2250 IDS Center
Minneapolis, MN 55402
(612) 338-0661

June 13, 1980.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

JOINT AND SEPARATE ANSWERS AND COUNTERCLAIMS OF DEFENDANTS TO SECOND AMENDED AND SEPARATE COMPLAINTS OF PLAINTIFFS NEUMANN, ANDERSON, AND AUSTIN.

Filed June 16, 1980

[Title Omitted in Printing]

Come now these answering defendants and for their Joint and Separate Answer to Plaintiffs Neumann, Anderson and Austin's Second Amended and Separate Complaint:

1. Deny generally each and every allegation, statement and other thing in said Complaint contained except as hereinafter admitted, qualified or otherwise answered.

2. Deny the allegations set forth in paragraphs 1 and 2.

3. Admit the allegations set forth in paragraph 3.

4. Admit the allegations set forth in paragraph 4 except as to plaintiff John S. Hall, which allegation is denied.

5. Admit that B. J. Loftsgaarden is a citizen and resident of Minnesota and that B. J. Loftsgaarden organized Alotel Associates for the purpose of building, furnishing and operating a motel in Rochester, Minnesota to be known as the Rochester Ramada, but deny each and every other allegation set forth in paragraph 5.

6. Admit the allegations set forth in paragraph 6 except as to the effective date upon which Alotel Incorporated ceased to act as a general partner of Alotel Associates, which allegation is denied.

7. Admit the allegations set forth in paragraph 7.

8. Deny the allegations set forth in paragraph 8.

9. Admit the allegations set forth in paragraphs 9 and 10.

10. Admit the allegations set forth in paragraph 11 except to the extent that such allegations modify or vary the written forecast prepared by Touche Ross & Company and made a part of the offering memorandum.

11. Admit that Loftsgaarden and Alotel, Incorporated supplied an offering memorandum concerning Alotel Associates to plaintiffs Neumann and Anderson and Austin and that the offering memorandum contained the estimates supplied by Touche Ross, deny the last sentence of paragraph 12.

12. Admit the first sentence of paragraph 13. Deny the allegation of oral representations.

13. Deny the allegations set forth in paragraph 14 and 15.

14. In regard to paragraphs 16, 17, and 18, admits that Plaintiff Neumann purchased one and a half partnership units, Plaintiff Anderson purchased one unit and Plaintiff Austin purchased one unit.

15. Admit the allegations set forth in paragraph 19 except as to plaintiff John S. Hall which allegation is denied.

16. With respect to paragraphs 20, 21. and 22, admit that Alotel Associates experienced cash flow problems in March. 1975, but deny each and every other allegation set forth in those paragraphs.

17. Deny the allegations set forth in paragraphs 23 and 24.

18. Lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 25.

19. Admit that Alotel Associates was experiencing cash flow problems in May of 1975, but deny each and every other allegation set forth in paragraphs 26, 27, and 28.

20. Deny the allegations set forth in paragraphs 29 and 30.

21. Lack information or knowledge sufficient to form a belief in regard to paragraph 31.

22. Deny the allegations set forth in paragraph 32.

23. Lack information or knowledge sufficient to form a belief in regard to paragraph 33.

AS TO COUNT ONE:

24. Admit or deny, as stated above in paragraphs 1 to 21 of this Answer, the allegations contained in paragraphs 1 to 33 of the Complaint as realleged in paragraph 34 of the Complaint.

25. Deny the allegations set forth in paragraphs 35 to 45.

AS TO COUNT TWO:

26. Admit or deny, as stated above in paragraphs 1 to 25 of this Answer, the allegations contained in paragraphs 1 to 42 of the Complaint as realleged in paragraph 46 of the Complaint.

27. Deny the allegations set forth in paragraphs 46 and 50.

AS TO COUNT THREE:

28. Admit or deny, as stated above in paragraphs 1 to 27 of this Answer, the allegations set forth in paragraphs 1 to 47 of the Complaint as realleged in paragraph 51 of the Complaint.

29. Deny the allegations set forth in paragraphs 52 and 53.

AS TO COUNT FOUR:

30. Admit or deny, as stated above in paragraphs 1 to 29 of this Answer, the allegations contained in paragraphs 1 to 53 of the Complaint as realleged in paragraph 54 of the Complaint.

31. Deny the allegations set forth in paragraphs 55 and 56.

AS TO COUNT FIVE:

32. Admit or deny as stated above in paragraphs 1 to 31 of this Answer, the allegations set forth in paragraphs 1 to 56 of the Complaint as realleged in paragraph 57 of the Complaint.

33. Deny the allegations set forth in paragraphs 58 through 62.

AS TO COUNT SIX:

34. Admit or deny, as stated above in paragraphs 1 to 33 of this Answer, the allegations set forth in paragraphs 1 to 62 of the Complaint as realleged in paragraph 63 of the Complaint.

35. Deny the allegations set forth in paragraphs 64 to 66.

AS TO COUNT SEVEN:

36. Admit or deny, as stated above in paragraphs 1 to 35 of this Answer, the allegations set forth in paragraphs 1 to 66 of the Complaint as realleged in paragraph 67 of the Complaint.

37. Deny the allegations set forth in paragraphs 68 and 69.

AS TO COUNT EIGHT:

38. Admit or deny, as stated above in paragraphs 1 to 37 of this Answer, the allegations set forth in paragraphs 1 to 69 of the Complaint as realleged in paragraph 70 of the Complaint.

39. Deny the allegations set forth in paragraphs 71 and 72.

AS TO COUNT NINE:

40. Admit or deny, as stated above in paragraphs 1 to 39 of this Answer, the allegations set forth in paragraphs 1 to 72 of the Complaint as realleged in paragraph 73 of the Complaint.

41. Lack information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 74.

42. Deny the allegations set forth in paragraph 75.

43. Admit the allegations set forth in paragraph 76.

44. Deny the allegations set forth in paragraphs 77, 78, and 79.

AS TO COUNT TEN:

45. Admit or deny, as stated above in paragraphs 1 to 44 of this Answer, the allegations set forth in paragraphs 1 through 79 of the Complaint as realleged in paragraph 80 of the Complaint.

46. Deny the allegations set forth in paragraphs 81 and 82.

AS TO COUNT ELEVEN:

47. Admit or deny, as stated above in paragraph 1 to 46 of this Answer, the allegations set forth in paragraphs 1 through 82 of the Complaint as realleged in paragraph 83 of the Complaint.

48. Deny the allegations set forth in paragraphs 84 and 85.

AFFIRMATIVE DEFENSES

49. The Complaint fails to state a claim upon which relief may be granted.

50. The Court lacks jurisdiction over the subject matter.

51. The Court lacks jurisdiction over the person of one or more of the defendants.

52. Defendants have fully performed all the terms and conditions of that certain stipulation of settlement and settlement agreement entered into between defendants and Alotel Associates, on its own behalf and on behalf of all plaintiffs, including Doctors Neumann, Anderson and Austin, now on file and of record on that certain consolidated action in the District Court, Third Judicial District, County of Olmsted, State of Minnesota, entitled the *First National Bank of Rochester v. Property Development and Research Company, et al,* File No. 40449, and *United Realty Trust v. Property Development and Research Company, et al,* 40375, and plaintiffs received and accepted the same in full satisfaction and discharge of any and all claims which they have or may have for damages purportedly sustained by plaintiffs by reason of the alleged acts in their separate complaint.

53. Plaintiffs had knowledge of and assumed the risks incident to their purchase of limited partnership units in Alotel Associates and the damages alleged by plaintiffs were caused by and arose out of such risks.

54. Whatever damages were sustained by plaintiffs as a result of their purchase of limited partnership units in Alotel Associates were caused in whole, or in part, or contributed to, by reason of the negligent acts or omissions of the plaintiffs and each of them.

55. Plaintiffs, and each of them, lack standing to pursue the claims asserted in their separate Complaint by reason of their active involvement in the management and conduct of the affairs of Alotel Associates and the operation of the Rochester Ramada.

56. Plaintiffs are estopped, by reason of their assumption, together with the assumption by all other plaintiffs in this action, of the duties of the general partner of Alotel Associates and the subsequent stipulation of settlement and settlement agreement alleged above, from asserting the claims set forth in their separate Complaint.

57. Plaintiffs, together with all other individual plaintiffs in this action who purchased limited partnership units of Alotel Associates, delivered to defendants for valuable consideration a general release contained in the stipulation of settlement and settlement agreement whereby plaintiff duly released defendants or forever discharged them from any and all claims arising out of or related to their investment in Alotel Associates as limited partners including the claims alleged in their separate Complaint.

58. Plaintiffs' claims, in whole or in part, are barred by various applicable statutes of limitations.

59. Defendants B. J. Loftsgaarden and Alotel Incorporated's performance as general partners of Alotel Associates, the failure of which is alleged in the separate Complaint, was made impossible by various intervening forces over which the defendants had no control, including their removal as general partners of Alotel Associates and unfavorable economic conditions.

COUNTERCLAIM

Defendants B. J. Loftsgaarden and Alotel Incorporated, for their separate Counterclaim against plaintiffs Neumann, Anderson, and Austin, and each of them, state:

JURISDICTION

Subject matter jurisdiction is based upon the pendent jurisdiction of this Court and the matter in controversy exceeds the sum of $10,000, exclusive of interests and costs.

COUNT ONE

60. Defendants reallege each allegation of the separate Complaint of Plaintiffs Neumann, Anderson and Austin which has been admitted by these defendants as stated above in paragraphs 1 to 48 of this Answer.

61. During the summer of 1975, and in no event later than September 17, 1975, plaintiffs and each of them became actively involved in and assumed the responsibility for the daily operation and management of the Ramada Inn project owned by Alotel Associates and the conduct of the general affairs of Alotel Associates. During such period of time, and at the instigation and insistence of plaintiffs, defendants were removed as general partners of Alotel Associates and ceased all active involvement in the management and operation of the Ramada Inn project.

62. By reason of their involvement in the development, construction and operation of the Ramada Inn project for Alotel Associates, defendants invested substantial amounts of money and time and thereby conferred substantial benefits upon Alotel Associates for which defendants are entitled to be compensated.

63. Plaintiffs knew, or should have known, that defendants had conferred substantial benefits upon Alotel Associates for which they are entitled compensation.

64. Plaintiffs negligently and recklessly, with wanton disregard of defendants' rights as developer and former general partners of Alotel Associates, managed the affairs of and operated the Ramada Inn project in such a manner as to waste the assets of Alotel Associates, lose substantial profits in the Ramada Inn project, and ultimately place the entire Ramada Inn project in default, whereupon foreclosure proceedings were commenced and the project taken over by the project's permanent lenders, including, but not limited to, the First National Bank of Rochester and United Realty Trust.

65. As a result of the foregoing negligent acts and omissions of plaintiffs, defendants were damaged in the sum of not less than $200,000.00.

COUNT TWO

66. On or about December 20, 1976, defendants and plaintiffs entered into an agreement whereby defendants agreed to dismiss that certain unlawful detainer action then pending in Olmstead County Court, State of Minnesota, and to perform certain other duties and acts in consideration for which Alotel Associates and each of its individual partners, including plaintiffs, agreed to release and forever discharge defendants from any and all claims which they had or may have had, now or in the future, arising out of or related to their investments in Alotel Associates and that certain project known as the Rochester Ramada Inn, including the claims asserted by plaintiffs in this action.

67. Defendants, and each of them, fully performed each and every term and condition of such agreement re-

quired on its part, including the payment of monies to various creditors of Alotel Associates and the conveyance of any and all interests which defendants had or may have had in the Rochester Ramada Inn and the real property upon which it is situated to Alotel Associates for its benefit and for the benefit of its individual partners, including plaintiffs.

68. Defendants performed such terms and conditions on its part in reliance upon the promises of Alotel Associates and its individual partners, including plaintiffs, to fully perform the terms and conditions required by such agreement on their part. including without limitation the full and final release and discharge of defendants from all claims and causes of action as alleged above.

69. Plaintiffs have refused and otherwise failed to perform on their part such terms and conditions and have breached their agreement.

70. As a result of plaintiffs' breach of said agreement, defendants have been damaged in an amount not less than $120,000, including attorneys' fees necessarily incurred as a result of said breach.

WHEREFORE, the defendants demand judgment against plaintiffs as follows:

1. Dismissing with prejudice the separate Complaint of Plaintiffs Neumann, Anderson and Austin.

2. Awarding to defendants B. J. Loftsgaarden and Alotel Inc., compensatory damages in the amount of $200,000.00.

3. Awarding to defendants B. J. Loftsgaarden and Alotel Inc., damages in the amount of $120,000.00.

4. Awarding to defendants their costs and disbursements including attorneys' fees; and

5. Granting to defendants such other and further relief as the Court deems just and equitable.

MEAGHER, GEER, MARKHAM,
ANDERSON, ADAMSON,
FLASKAMP & BRENNAN

By /s/ Clyde F. Anderson
Attorneys for Defendants
2250 IDS Center
Minneapolis, MN 55402
(612) 338-0661

June 13, 1980.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Defendants' Requested Jury Instruction No. 30

Filed June 26, 1980

[Title Omitted in Printing]

REQUEST NO. 30

FIFTH ELEMENT: CAUSATION/DAMAGES

In order to recover in this case, each plaintiff must prove by a fair preponderance of the evidence that he suffered damages as a proximate result of the alleged false and misleading statements or omissions and the investment of money in Alotel Associates in reliance on them. This element has two parts: first, it requires a finding that the plaintiffs suffered damages; and second, it requires a finding that those damages were proximately caused by the defendants' conduct, and not by other factors.

a. *Existence of Damages*

First you must determine that the plaintiffs suffered actual damages as the result of their investment in Alotel Associates. In making this determination, you are instructed that you may consider that money which the plaintiffs actually invested in the partnership, both for the purchase of limited partnership units and for the later advancement of additional money to the partnership. You may then consider what part of their investment the plaintiffs have already recovered, either in the form of returns on their investment or in the form of income tax benefits which they have obtained.

See Devitt and Blackmar, *Federal Jury Practice and Instructions* § 98.14: *Dupuy v. Dupuy*, 551 F.2d 1005, 1025 (5th Cir. 1977); *Bridgen v. Scott*, 456 F.Supp. 1048, 1058-1059, 1061 (S.D. Tex. 1978); *Bayoud v. Ballard*, 404 F.Supp. 417, 426 (D. Tex. 1975); *Hickman v. Groesbeck* 389 F.Supp. 769, 780 (D. Utah 1974).

b. *Causation*

If you determine that any of the plaintiffs did suffer actual damages, you must then determine whether the alleged misleading statements or omissions of the defendants were the proximate cause of that loss. In order to recover, the plaintiffs must show that the alleged misleading statements or omissions of the defendants played a substantial part in bringing about or causing the damages suffered by them, and that the damages were either a direct result or a reasonably foreseeable result of the misleading statements or omissions. If you find that any loss sustained by the plaintiffs was caused by something other than the conduct of the defendants, then you must find for the defendants.

Devitt and Blackmar, *Federal Jury Practice and Instructions* § 98.14; *Investors Thrift Corp. v. Sexton*, 491 F.2d 768 (8th Cir. 1974).

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

SPECIAL VERDICT

Filed June 25, 1980

[Title Omitted in Printing]

Rule 10b-5 and Chapter 80A Claims

In connection with the sale of limited partnership units in Alotel Associates to plaintiffs:

1. Did the Offering Memorandum contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading?

Answer: Yes or No Yes

2. *If* and *only if* your answer to Question No. 1 is "Yes", answer the following question:

Was such untrue statement of material fact or omission knowingly made?

Answer: Yes or No Yes

3. *If* and *only if* your answers to to Question Nos. 1 and 2 are both "Yes", answer the following question:

Which, if any, of defendants is liable for such untrue statement or omission?

Filed June 25, 1980

Robert E. Hess, Clerk
By /s/ Sj
Deputy

Answer: Loftsgaarden —Yes or No Yes
Alotel Incorporated —Yes or No Yes
Noah —Yes or No No
Coult —Yes or No No
PDRC —Yes or No Yes
2361 —Yes or No Yes

4. *If* and *only if* your answers to both Question Nos. 1 and 2 are "Yes" *and if* and *only if* your answer to Question No. 3 included one or more answers of "Yes", answer the following question:

Which, if any, of plaintiffs relied on such untrue statement?

Answer: Dr. Anderson —Yes or No Yes
Dr. Austin —Yes or No Yes
Dr. Neumann —Yes or No Yes
Dr. Randall —Yes or No Yes

5. *If* and *only if* your answers to Questions Nos. 1 and 2 are "Yes" *and if* and *only if* your answer to Question No. 4 included one or more answers of "Yes", answer the following question with respect to each plaintiff as to whom your answer to Question No. 4 is "Yes":

Which, if any, of plaintiffs suffered damage as a result of such reliance?

Answer: Dr. Anderson —Yes or No Yes
Dr. Austin —Yes or No Yes
Dr. Neumann —Yes or No Yes
Dr. Randall —Yes or No Yes

In connection with plaintiffs' making of loans to Alotel Associates:

6. *If* and *only if* your answer to Question No. 4 included one or more answers of "Yes", answer the following question *only* with respect to each plaintiff as to whom your answer to Question No. 3 is "Yes":

Which if any, of plaintiffs continued to rely on an untrue statement or omission in the Offering Memorandum in making one or more loans to Alotel Associates?

Answer: Dr. Anderson —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No
—Loan # 4—Yes or No No
—Loan # 5—Yes or No No

Dr. Austin —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No
—Loan # 4—Yes or No No
—Loan # 5—Yes or No No

Dr. Neumann —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No
—Loan # 4—Yes or No No
—Loan # 5—Yes or No No

Dr. Randall —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No

7. *If* and *only if* you did *not* answer "Yes" to all portions of Question No. 6, answer the following question:

> Did defendants make any additional untrue statement of material fact or omit to state a material fact at or before the time plaintiffs made loans to Alotel Associates?

Answer: Yes or No Yes

8. *If* and *only if* you did *not* answer "Yes" to all portions of Question No. 6 *and if* and *only if* your answer to Question No. 7 was "Yes", answer the following question:

> Which, if any, of defendants is liable for such untrue statement or omission?

Answer:	Loftsgaarden	—Yes or No Yes
	Alotel Incorporated	—Yes or No Yes
	Noah	—Yes or No No
	Coult	—Yes or No No
	PDRC	—Yes or No Yes
	2361	—Yes or No Yes

9. *If* and *only if* your answer to Question No. 7 is "Yes" *and if* and *only if* your answer to Question No. 8 included one or more answers of "Yes", answer the following question *only* with respect to such loan as to which your answer to Question No. 6 was "No":

> Which, if any, of plaintiffs relied on such untrue statement in connection with the making of which, if any, loan?

Answer:	Dr. Anderson	—Loan # 1—Yes or No No
		—Loan # 2—Yes or No No

—Loan # 3—Yes or No No
—Loan # 4—Yes or No No
—Loan # 5—Yes or No No

Dr. Austin —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No
—Loan # 4—Yes or No No
—Loan # 5—Yes or No No

Dr. Neumann —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No
—Loan # 4—Yes or No No
—Loan # 5—Yes or No No

Dr. Randall —Loan # 1—Yes or No No
—Loan # 2—Yes or No No
—Loan # 3—Yes or No No

10. *If* and *only if* your answer to Question No. 9 included one or more answers of "Yes", answer the following question *only* with respect to such loan as to which your answer to Question No. 9 was "Yes":

Which, if any, of plaintiffs suffered damages as a result of such reliance?

Answer: Dr. Anderson —Loan # 1—Yes or No ——
—Loan # 2—Yes or No ——
—Loan # 3—Yes or No ——
—Loan # 4—Yes or No ——
—Loan # 5—Yes or No ——

Dr. Austin —Loan # 1—Yes or No ——
—Loan # 2—Yes or No ——
—Loan # 3—Yes or No ——
—Loan # 4—Yes or No ——
—Loan # 5—Yes or No ——

Dr. Neumann —Loan # 1—Yes or No ——
—Loan # 2—Yes or No ——
—Loan # 3—Yes or No ——
—Loan # 4—Yes or No ——
—Loan # 5—Yes or No ——

Dr. Randall —Loan # 1—Yes or No ——
—Loan # 2—Yes or No ——
—Loan # 3—Yes or No ——

Section 12(2) Claims

In connection with the sale of limited partnership units in Alotel Associates to plaintiffs:

11. Did the Offering Memorandum contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made not misleading?

Answer: Yes or No Yes

12. *If* and *only if* your answer to Question No. 11 is "Yes", answer the following question:

Did defendants know or in the exercise of reasonable care should they have known that the untrue statement was false in that a material fact had been omitted?

Answer: Yes or No Yes

13. *If* and *only if* your answers to both Questions Nos. 11 and 12 are "Yes", answer the following question:

Which, if any, of plaintiffs did not know of the omitted fact or that the untrue statement was false?

Answer: Dr. Anderson —Yes or No Yes

Dr. Austin —Yes or No Yes

Dr. Neumann —Yes or No Yes

Dr. Randall —Yes or No Yes

14. *If* and *only if* your answer to Question No. 13 included one or more answers of "Yes", answer the following question *only* with respect to each plaintiff as to whom your answer to Question No. 10 was "Yes":

Which, if any, of plaintiffs continued to rely on an untrue statement or omission in the Offering Memorandum in making which, if any, loan to Alotel Associates?

Answer: Dr. Anderson —Loan # 1—Yes or No No

—Loan # 2—Yes or No No

—Loan # 3—Yes or No No

—Loan # 4—Yes or No No

—Loan # 5—Yes or No No

Dr. Austin —Loan # 1—Yes or No No

—Loan # 2—Yes or No No

—Loan # 3—Yes or No No

—Loan # 4—Yes or No No

—Loan # 5—Yes or No No

Dr. Neumann —Loan # 1—Yes or No No

—Loan # 2—Yes or No No

—Loan # 3—Yes or No No

—Loan # 4—Yes or No No

—Loan # 5—Yes or No No

Dr. Randall —Loan # 1—Yes or No No

—Loan # 2—Yes or No No

—Loan # 3—Yes or No No

15. *If* and *only if* you did *not* answer "Yes" to all portions of Question No. 14, answer the following question:

Did defendants make any additional untrue statement of material fact or omit to state a material fact at or before the time plaintiffs made loans to Alotel Associates?

Answer: Yes or No Yes

16. *If* and *only if* your answer to Question No. 15 is "Yes", answer the following question:

Did defendants know or in the exercise of reasonable care should they have known that the untrue statement was false in that a material fact had been omitted?

Answer: Yes or No Yes

17. *If* and *only if* your answers to both Questions Nos. 15 and 16 are "Yes", answer the following question *only* with respect to such loan as to which your answer to Question No. 14 was "No":

Which, if any, of plaintiffs did not know of the omitted fact or that the untrue statement was false at the time of making which, if any, loan?

Answer: Dr. Anderson —Loan # 1—Yes or No No

—Loan # 2—Yes or No No

—Loan # 3—Yes or No No

	- Loan # 4—Yes or No No
	—Loan # 5—Yes or No No
Dr. Austin	—Loan # 1—Yes or No No
	—Loan # 1—Yes or No No
	—Loan # 2—Yes or No No
	—Loan # 3—Yes or No No
	—Loan # 4—Yes or No No
	—Loan # 5—Yes or No No
Dr. Neumann	—Loan # 1—Yes or No No
	—Loan # 2—Yes or No No
	—Loan # 3—Yes or No No
	—Loan # 4—Yes or No No
	—Loan # 5—Yes or No No
Dr. Randall	—Loan # 1—Yes or No No
	—Loan # 2—Yes or No No
	—Loan # 3—Yes or No No

Common Law Fraud Claims

In connection with the sale of limited partnership units to plaintiffs:

18. Did the Offering Memorandum contain any untrue statement or omit to state a fact?

Answer: Yes or No Yes

19. *If* and *only if* your answer to Question No. 18 is "Yes", answer the following question:

Was the untrue statement or omission one concerning a material fact?

Answer: Yes or No Yes

20. *If* and *only if* your answers to to both Questions Nos. 18 and 19 are "Yes", answer the following question:

Which, if any, of defendants knew or should have known that the untrue statement was false or that there was an omission?

Answer:	Loftsgaarden	—Yes or No Yes
	Alotel Incorporated	—Yes or No Yes
	Noah	—Yes or No No
	Coult	—Yes or No No
	PDRC	—Yes or No Yes
	2361	—Yes or No Yes

21. *If* and *only if* your answers to both Questions Nos. 18 and 19 are "Yes" *and* your answer to to Question No. 20 included at least one "Yes", answer the following question:

Which, if any, of plaintiffs relied on the untrue statement or omission?

Answer:	Dr. Anderson	—Yes or No Yes
	Dr. Austin	—Yes or No Yes
	Dr. Neumann	—Yes or No Yes
	Dr. Randall	—Yes or No Yes

22. *If* and *only if* your answer to Question No. 21 included one or more answers of "Yes", answer the following question *only* with respect to each plaintiff as to whom your answer to Question No. 21 was "Yes":

Which, if any, of plaintiffs was damaged as a direct result of such reliance?

Answer: Dr. Anderson —Yes or No Yes

Dr. Austin —Yes or No Yes

Dr. Neumann —Yes or No Yes

Dr. Randall —Yes or No Yes

23. *If* and *only if* your answer to Question No. 22 included one or more answers of "Yes", answer the following question *only* with respect to each plaintiff as to whom your answer to Question No. 22 was "Yes":

What is the amount of damages, if any, which each such plaintiff suffered?

Answer: Dr. Anderson —$35,000

Dr. Austin —$35,000

Dr. Neumann —$52,500

Dr. Randall —$35,000

Dated: June 25, 1980

/s/ Michael J. Elasey

Foreperson

TRIAL EXHIBITS

United States District Court
District of Minnesota
Fourth Division

October 6, 1980

[Title Omitted in Printing]

Plaintiff's No. 2

OFFERING MEMORANDUM

ALOTEL ASSOCIATES
A LIMITED PARTNERSHIP

20 LIMITED PARTNERSHIP UNITS

$35,000 PER UNIT

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OFFERING

This offering relates to Units of Limited Partnership of Alotel Associates, a Minnesota Limited Partnership. The Corporate General Partner, Alotel, Incorporated, a Minnesota Corporation, is offering an aggregate of 20 Limited Partnership Units of $35,000 each. The sale of these Units is to be made to not more than 20 persons who are residents of the State of Minnesota. It is not presently contemplated that commissions will be paid. However, the General Partner reserves the right to employ brokers and dealers in which case negotiated commissions will be paid.

The Partnership Agreement provides that unless 70% of the Units (14 Units) are sold within 180 days of the date of the first Unit sale, the Partnership will terminate and all funds received will be returned to investors; until such date, all funds will be held in escrow in a commercial bank.

THE PARTNERSHIP

The Partnership, Alotel Associates, is to be formed as a Minnesota Limited Partnership for the purpose of constructing and thereafter operating a Ramada Inn Motel in Rochester, Minnesota. The term of the Partnership will be until December 31, 2002, or until the project is sold. The Partnership will have as its general partners Alotel, Incorporated, a Minnesota corporation and B. J. Loftsgaarden (the "General Partners"). The Limited Partnership will have an authorized capital consisting of 20 Limited Partnership Units of $35,000.00 each.

INVESTOR SUITABILITY STANDARDS

Because of the size of the investment required of each purchaser of a Limited Partnership Unit, and because of the relative lack of liquidity of this investment the Partnership has established "suitability standards" for those who wish to invest in it. In addition the Partnership is intended to operate as a "tax shelter" and will lead to significantly greater returns for persons in relatively high income tax brackets; correspondingly returns will not be as great for those not in high income tax brackets (assuming the Partnership's income and expenses parallel the estimates of management, of which there is no assurance). Each person who desires to invest must represent that he has either a net worth in excess of $200,000 (excluding home and automobiles) or that some portion of his income is subject to Federal and State income taxes at a rate of 50% or more. He further must represent that he is a resident of the State of Minnesota and is investing for investment purposes and not for the purposes of distribution.

DESCRIPTION OF THE PROJECT

The Partnership proposes to construct a motel containing 170 guest rooms in five stories as well as a restaurant, lounge and commercial areas. The motel will be so constructed as to meet or exceed standards set by Ramada Inns, Inc., the licensor. The lower level will contain a restaurant and 25 of the rooms; eleven of the first floor rooms are to be "cabana" rooms around the indoor-outdoor swimming pool. The motel building will be constructed of precast 8-inch concrete plank floors and ceiling. Walls are to be painted block and vinyl covered wall-

board. There is to be central heating and cooling for the public and commercial areas on the main level. Guest rooms will have through-the-wall individually operated and controlled heating and cooling devices. All public, commercial and guest areas will have carpeting and resilient floor tile. The building will be faced with exterior brick, and architectural panels. The motel tower will contain two elevators with a speed of 125 feet per minute.

The motel is to be built upon a site which will contain enough rooms to construct bituminous parking sufficient for 328 cars. The site will be landscaped as necessary.

THE FRANCHISE

The Partnership through its General Partners has entered into a license agreement with Ramada Inns, Inc. (a Delaware Corporation) for the operation of the motel in Rochester, Minnesota. The Partnership has no relation to Ramada Inns, Inc. other than as a licensee. The license agreement covers an initial period of 20 years. An initial license payment of $15,000 is required. In addition to the initial payment, the Partnership will be required to pay to Ramada Inns an amount equal to 3% of gross room rentals as a royalty fee. Among other provisions the license agreement also: (1) prohibits transfer of the license without the prior consent of Ramada Inns, Inc.; (2) grants to Ramada Inns, Inc. a first right of refusal in the event the motel or any interest therein is proposed to be sold; (3) provides that virtually all supplies and equipment used in the operation of the motel must be purchased from Ramada Inns, Inc. or must be approved by it as to quality; (4) grants the right to use the name, operat-

ing procedures, reservation system and training facilities of the Ramada Inns chain.

LOCATION OF MOTEL

The motel is to be constructed in the south central area of Rochester, Minnesota, on the west side of U.S. Highway 63 between 16th and 17th Street, S.W. The location is within the City of Rochester and is served by all public utilities.

NEARBY MOTELS AND OTHER COMPETITION

In the immediate vicinity of the City of Rochester there are approximately 25 hotels with a total of 2,185 rooms and 40 motels with a total of approximately 2,000 rooms available for occupancy. Of these hotels and motels, the ones which may be considered the most competitive with that to be constructed by the Partnership would be the Holiday Inn located directly across the street from the site of the Partnership's motel and the Howard Johnson Motor Hotel which is located on the other side of the business district in Rochester. The Holiday Inn has available 200 units for occupancy and the Howard Johnson contains approximately 120 units. In addition to these two motels, the City of Rochester has four hotels located in the central business district which have over 100 rooms each. These hotels are the Carlton with 115 rooms, the Kahler with 800 rooms, the Zumbro with 175 rooms and the Holiday Inn Downtown with 338 rooms. With the exception of the Holiday Inn Downtown, these hotels are old and do not contain the amenities which will be available in the Ramada Inn to be constructed by the Partnership.

The City of Rochester has a very large transient population as a result of the location of the Mayo Clinic in the city. It is therefore likely that a containing demand for overnight or short-term living facilities will exist in and around the City of Rochester. There is, however, no assurance that such a demand will continue or that such a demand will lead to high levels of occupancy at the Ramada Inn to be constructed by the Partnership. In addition there is no assurance that other motels or hotels of quality similar to that to be constructed by the Partnership will not be constructed in the near future by others in and around the City of Rochester. In the event such hotels or motels are constructed the operating results of the Partnership may be adversely affected.

CONSTRUCTION OF THE PROJECT BY AFFILIATE

It is presently contemplated that the Partnership will enter into a construction contract with a construction company for the construction and furnishing of the motel for a total expenditure of $3,150,000 (including certain expenditures which will be treated as partnership expenses for tax purposes). See Proposed Budgets included with this Memorandum. The construction company will be owned or controlled by persons who are also in ownership or control of the corporate general partner of the Partnership. It is therefore possible that larger than usual profits could be made by said persons in connection with the construction of the project.

FINANCING

The General Partners have procured a firm commitment for long term financing of the project from Larwin

Realty and Mortgage Trust. The commitment calls for interest to be paid at the rate of 9½% per annum and for the principal to be amortized based on a 28 year schedule with level monthly payments for 12 years and the entire balance due at the end of the 12th year. The total monthly interest and principal payments on the mortgage will be the amount of $19,678.50, the first payment of which will be due in September, 1974. It is presently contemplated that interim construction financing will be obtained from the First National Bank of St. Paul, and that these funds will be acquired at an interest rate of 9½% per year. The land on which the motel project will be built is leased for an initial term of 40 years with renewal options extending thereafter. Total land rent if $37,200 per year. The Partnership has the option to purchase the land under certain conditions.

MANAGEMENT

THE GENERAL PARTNER.

The General Partners, are B. J. Loftsgaarden and Alotel, Incorporated, It is presently contemplated that a management contract will be entered with Alotel, Incorporated and B. J. Loftsgaarden for the initial stages of organization and later for the operation of the motel. In their capacity as general partner and as the manager of the business of the Partnership, the General Partners will have full responsibility and authority for managing the day to day activities of the Partnership. Alotel, Incorporated is a new corporation, formed for the purpose of acting as one of the general partners in this Partnership. However, the principals of Alotel, Incorporated have experience in the hotel management area as set forth below.

The directors and officers of Alotel, Incorporated, their business addresses and their principal occupations are as follows:

NAME AND ADDRESS	POSITION HELD
B. J. Loftsgaarden 740 River Drive St. Paul, Minnesota	President and Director
M. S. Noah 1965 Baird Avenue St. Paul, Minnesota	Secretary and Director
John H. Burg 682 Ivy Falls Court St. Paul, Minnesota	Director
Lyman H. Coult 17508 Manor Road Minneapolis, Minnesota	Vice President and Director
Robert R. Dunlap 832 SW 10th Street Rochester, Minnesota	Director

Mr. B. J. Loftsgaarden has since 1962 been engaged in real estate development. He has acted as general partner of and supervised the initiation, financing, construction and operation of several apartment projects, nursing homes, housing developments and mobile home parks. He developed and is presently one of the managing partners of a large motel in Roseville, Minnesota in addition to his other real esate activities.

Mrs. M. H. Noah is presently engaged in various investment activities.

Mr. Lyman H. Coult is President of Coult Management Co. and Coult Mortgage Co. These companies are

engaged in commercial real estate development and management.

Mr. John H. Burg is President of Hulme Awning and Shade Co., St. Paul, Minnesota; Mr. Robert Dunlap is a practicing attorney.

COMPENSATION OF GENERAL PARTNER.

The Partnership Agreement provides that the General Partners will receive a base management fee for managing the Partnership's properties of $11,500 per year (subject to adjustment if the Partnership's gross revenue increase) plus an additional management fee of ten percent of the net profit of the Partnership before the payment of any installment of principal or interest on any mortgage note on the property (called debt service) and before depreciation or provision for income tax. The additional management fee is limited and may not exceed fifty percent of the cash remaining after the payment of debt service in any fiscal year.

ASSET REQUIREMENTS.

As set forth in another section of this Offering Memorandum, the Internal Revenue Service prior to issuing advance rulings as to the Partnership status of Limited Partnerships in which the sole General Partner is a corporation requires that in cases where total contributions to the Partnership are under $2,500,000 that the net worth of the General Partner be at least equal to fifteen percent of the total contributions. In the case of Alotel Associates, the total contributions are to be $700,000. Accordingly the General Partner would be required to maintain net worth in excess

of $105,000 to satisfy this requirement, if B. J. Loftsgaarden were to cease acting as a general partner. An insurance policy has been taken out on Mr. Loftsgaarden's life, in the amount of $105,000 payable to Alotel, Incorporated. In addition the principals of Alotel, Incorporated have agreed to take such steps as they deem necessary to assure the continued classification of the Partnership as a partnership rather than as an association taxable as a corporation. These steps may include contributions of additional funds to Alotel, Incorporated and/or the substitution or addition of other individual (rather than corporate) General Partners to the Partnership.

OPERATIONAL PERSONNEL.

The General Partners will employ experienced hotel operators and personnel who will be given initial special training both at the Ramada Inn school in Phoenix, Arizona and at the project through the use of training sessions, manuals, and other aids. The operation is thus assured of being up to the standards set by Ramada Inns, Inc., the licensor. Management personnel are required to attend periodic training sessions at Ramada Inn seminars and schools. Ramada Inns, Inc., the licensor, conducts periodic inspection of operations to assure compliance with nationally set standards.

USE OF PROCEEDS

In the event all of the Units offered hereby are sold the proceeds to the Partnership will be $700,000. Of this amount $600,000 will be utilized to construct the motel building and to provide for its furniture and fixtures.

$100,000 will be used to cover initial operating expenses and expendables.

In the event that less than all the Units (but more than 70% thereof) are sold, the Partnership may borrow additional funds or lease certain items of personal property needed in the operation of the motel, in order to complete the Project; this could have a substantial effect on cash distributions to partners and on the potential risk of the investment. Alternatively, the Developer may elect to accept partial payment on the construction cost of the project in Units.

THE LIMITED PARTNERSHIP UNIT

As set forth in the Articles of Limited Partnership, a copy of which is included with this Offering Memorandum, the Limited Partnership Unit has certain rights, liabilities, and obligations. The summary set forth herein is not exhaustive of the matters set forth in the Partnership Agreement and this summary is qualified in its entirety by the Partnership Agreement itself.

PAYMENT FOR LIMITED PARTNERSHIP UNITS. The Limited Partnership Units are to be paid for in cash and are otherwise non-assessable.

LIMITED TRANSFERABILITY. The Limited Partnership Units may not be transferred without the written consent of the General Partners. Limited Partners may, however, assign their beneficial interest in the income attributable to a Unit. The assignee of the beneficial interest in a Unit may be substituted as a Limited Partner only upon meeting certain terms and conditions prescribed in the

Partnership Agreement. There is thus no assurance that any owner of a Limited Partnership Unit will be able to sell or otherwise dispose of his Unit. (Article 17).

AMENDMENTS TO PARTNERSHIP AGREEMENT. The Partnership Agreement may be amended or the General Partners may be replaced upon the vote of two-thirds of the then outstanding Limited Partnership Units. Meetings to consider such amendments are to be called by the General Partners upon the request of the holders of ten percent of the Limited Partnership Units. (Sections 19.1, 19.3, and 19.4).

CONTROL OF PARTNERSHIP ACTIVITY. All activities of the Partnership are to be under the control of the General Partners; Limited Partners may not participate in the operation or control of the Partnership business. (Section 12.2).

POWER OF ATTORNEY. Each holder of a Limited Partnership Unit by executing the Instrument of Execution, grants to the General Partners or either of them his power of attorney to execute certificates and documents on his behalf which relate to the Partnership. Such certificates and documents will include amendments to the Certificate of Limited Partnership or the Partnership Agreement necessitated by the vote of Partners. (Article 23).

ALLOCATION OF PROFITS AND LOSSES. Partnership profits and losses are to be allocated 100% to the Limited Partners (Section 9.2). The amounts allocable to the Limited Partners are to be allocated among them in proportion to the number of Units held by each of them. The General Partners are entitled to compensation for

their services in managing the motel. The basic management fee is 10% of net profit before interest expense, management fees, depreciation and amortization, land rental and income taxes and the additional management fee is equal to 10% of the net cash flow of the partnership. The basic management fee may not exceed fifty percent of the net profit before depreciation and management fee. (Section 10.1).

If the Partnership has taxable income, cash distributions to limited partners will be taxable to them. To the extent that annual depreciation and other expenses exceed the cash income of the partnership, distributions will reduce the tax basis of a Limited Partnership Unit. If at some time the tax basis of a Limited Partnership Unit has been fully recovered, any further distributions in excess of taxable income as reported by the Partnership will generally be taxed at capital gains rates.

Generally, the basis of a Limited Partnership Unit for the purpose of determining gain or loss upon sale or disposition of such Unit will be equal to its cost reduced by Partnership capital distributions in excess of the Partnership's income, further reduced by Partnership losses allocated to the partners and increased by any undistributed Partnership income. Gain or loss realized on the sale or exchange of a Limited Partnership Unit by the holder thereof, who is not a "dealer" will generally be treated as a capital gain or loss except to the extent of any applicable recapture of depreciation which will be treated as ordinary income.

Subject to the recapture of depreciation (taxable as ordinary income) gain which may be earned by the Part-

nership upon the sale or exchange of the Partnership's property will generally be treated as capital gain under applicable Federal income tax provisions so long as the Partnership does not become a "dealer" in real estate. If the Partnership is deemed to be a "dealer" and its investment in the motel is deemed not to be a capital investment, gain or loss upon sale or other disposition of the property would be treated as ordinary gain or loss.

The Internal Revenue Code as amended in 1969 imposes an additional 10% in tax on "items of tax preference" in excess of specified amounts. Depreciation on real estate taken in excess of that allowable on straight line rates and one-half of net long term capital gains are generally tax preference items. The 10% tax on tax preference items is ordinarily payable only if the total of all such items in any taxable year exceeds $30,000, plus the taxpayer's personal income tax for the year. The Partnership presently intends to use accelerated methods of depreciation. However, the general partner may use other methods in the future if it is then felt that this would be in the best interests of the Partnership.

The tax preference provisions further provide that the excess of investment interest expenses over net investment interest will be allowable as a deduction only to the extent of $25,000 plus one-half of such excess over $25,000. The remaining one-half of excess investment interest will be disallowed as a deduction. Investment interest expense as defined as interest incurred to purchase or carry investment property. Each partner of a partnership is required to include his proportionate share of the partnership's excess investment income in computing his own investment interest deduction. Under proposed Treasury regulations

it does not appear that interest expense incurred by the Partnership will be treated as investment interest in view of the fact that the Partnership will derive its revenues from operation of the motel and that no net leases are in force or contemplated. It is possible however that such interpretation may change and that the Partnership would be considered as holding "investment" property rather than as carrying on a trade or business. In that event the adverse tax effects stemming from non-deductibility of portions of investment interest would be applied to each partner.

The Internal Revenue Service has ruled that before issuing an advance ruling to the effect that a limited partnership wherein the sole general partner is a corporation, will be treated as a partnership rather than as an association taxable as a corporation, that certain initial requirements must be met. Among these requirements are:

(1) The limited partners of the partnership do not own in excess of twenty percent of the stock of the general partner;

(2) The net worth of the general partner must equal fifteen percent of the total contribution to the limited partnership (assuming that such tatol contributions are under Two Million Five Hundred Thousand Dollars);

(3) In computing the net worth of a corporate general partner, net worth requirements are to be applied separately for each limited partnership in which the corporate general partner may have an interest, and the corporate general partner must maintain at all times (exclusive of interest in and loans to the partnership in question), net worth at least equal to the sum of the amounts required for each separate partnership.

(4) The Internal Revenue Service has indicated that an individual general partner of a limited partnership must have substantial assets, apart from his interest in the partnership, in order that the partnership will be treated as a partnership and not as an association taxable as a corporation. At present it is intended that the Partnership will have both an individual and a corporate general partner.

Although the general partners, have undertaken to assure to the greatest extent possible that the requirements set forth above will at all times be met and that if at some time they may not be met that alternative methods of assuring the status of the Partnership as a partnership will be taken, there is no assurance that the Partnership will not be considered an association taxable as a corporation at any time. In the event that the Partnership is treated as such an association taxable as a corporation, all Partnership income and expense would not be credited or charged to the limited partners, and the Partnership itself would be subject to tax. Distributions by the Partnership would then be taxable to partners as dividends.

If the administration's tax proposals regarding "limitation on artificial accounting losses" (as presented to the House Ways and Means Committee on April 30, 1973) become law, it could result in the disallowance of deductions in excess of income generated by the project each year. However, such excess deductions could be carried forward to offset future income of the project. The effect on an investor in this project would be to eliminate the forecasted income tax savings for the years 1973 through 1976 with a corresponding elimination of the forecasted income tax cost for the years 1977 through 1982.

The foregoing description is not intended as a substitute for careful tax planning. Each purchaser of a Limited Partnership Unit is urged to consult his tax advisors with specific reference to his own situation and potential changes in the applicable tax laws.

NON-REGISTRATION

The Partnership does not intend to file registration statements with the State of Minnesota or with the Securities and Exchange Commission, Washington, D. C. The Partnership has however filed a Statement of Issuer with the State of Minnesota Securities Division, and an order permitting sale of these Units to Minnesota residents has been issued. The Partnership will rely upon exemptions from registration under the Securities Act of 1933 and the Securities Laws of the State of Minnesota. In connection with this reliance it is necessary that each prospective investor represent that he is purchasing a Limited Partnership Unit for investment purposes and not for purposes for resale or other distribution and that he is a resident of the State of Minnesota. Each subscriber will be required to execute in connection with his Instrument of Execution an "Investment and Non-Distribution Letter" setting forth his representations and warranties as to his intention when purchasing the Unit and agreeing to the imposition of restrictions on the Units to be issued to him.

APPRAISAL AND OPINIONS OF FEASIBILITY

Included with this memorandum are the Appraisal Certificate Page and feasibility portions of an appraisal of the project prepared by O. J. Janski, a member of the

American Institute of Real Estate Appraisers (MAI). These documents are part of a complete appraisal report, copies of which are available from the General Partners. The appraisal is based on information available to the appraiser. The General Partners make no representation that the property or project could be sold for the price set foth as its appaised value in the Appraisal Report.

PRCPOSED BUDGETS

Included with this memorandum are budgets showing budgeted receipts, and disbursements of the Partnership over future periods. These budgets are based upon present information and no representation can be made that they will necessarily reflect the future operations of the motel.

October 24, 1972

B. J. Loftsgaarden Enterprises
2540 North Cleveland Avenue
St. Paul, Minnesota 55113

Gentlemen:

In accordance with your request, I have made an inspection and an appraisal of the property to be constructed and known as the Ramada Inn, Rochester, Minnesota. This property is located on the west side of U. S. Highway 63 between 16th Street Southwest and 17th Street Southwest in the south-central area of the City of Rochester.

The value estimate, as it is hereinafter reported, is predicated upon completion of the construction as indicated in the plans, specifications, and other exhibits, in full accordance with all applicable codes and ordinances, as well as the

requirements of Ramada Inns, Inc. Based upon my inspection of the property, information supplied by your office and others, and a study of the market conditions as it relates to this property, it is my judgment that subject to the conditions and limitations as hereinafter stated, as of October 15, 1972, this property had a market value as indicated below:

Land	$ 385,000
Improvements	$2,690,000
F. F. & E.	$ 425,000
Total	$3,500,000

The accompanying report contains data secured from my personal investigation and from other sources considered to be reliable. Insofar as possible, it has all been checked and verified. The correctness, however, is not guaranteed.

Yours truly,
/s/ O. J. Janski, MAI

FEASIBILITY

It is probably a trite expression to state that Rochester is unique, but it is true, if for no other reason that it is the location of world-renowned medical facilities. Rochester is notable also for having a strong economic base and a growing population. Both are sustained in part by thousands of patients and visitors annually. The need for hotel-motel accommodations is inordinately large, and accommodations exceed at least nu-

merically those offered in most cities of equal size. A copy of part of the Rochester Hotel-Motel Guide is in the Exhibits section of this report.

My investigation of the site and the community as a part of my appraisal of the proposed Ramada Inn has convinced me that a franchise motel operation as indicated is a feasible undertaking and has good opportunity for success. The proposed site is across the street from the Holiday Inn that has undergone several recent expansions. The Holiday Inn site at 1630 South Broadway is inferior, because it is below street grade elevation, but the consequent design problems have not retarded its patronage and growth according to the evaluation specialist in the county government I consulted. At the present time, it has 200 rooms with rates $12 and $18 daily.

Another indication of what to expect is the recent experience of the 120-room Howard Johnson Motor Lodge located across town from the subject at 435 - 16th Avenue Northwest. This is the most recently constructed motel which opened in the Spring of 1972. The motel manager advised me that the most recent experience was an occupancy level of above 80% and that in his opinion, higher levels of occupancy were a good prospect. The manager was enthusiastic and apparently not inclined to discourage competition. Rates are $14 to $20 daily. A public announcement has been made of a Hilton motel franchise to be constructed near the Apache Shopping Center. To my knowledge, no on-site activity has taken place. Aside from the downtown hotels, the two motels referred to are the only ones with over 100 rooms and with similar food and beverage facilities to that to be offered by the proposed Ramada Inn. Altogether, my prognosis is favorable for the subject.

April 23, 1973

Alotel, Incorporated
2361 Highway 36
St. Paul, Minnesota 55113

Re: Alotel Associates, a Limited Partnership

Gentlemen:

You have requested our opinion as to certain Federal Income Tax matters related to Alotel Associates, a Limited Partnership, to be formed under the laws of the State of Minnesota.

Our opinion as expressed in this letter is based upon the Internal Revenue Code and the regulations and interpretation presently in effect. The Internal Revenue Code, the regulations and interpretations thereunder are all subject to change. The opinion as hereinafter stated is further based upon the following assumptions:

(a) The partnership will be formed under the laws of the State of Minnesota and the general partners will be and remain Alotel, Incorporated, a Minnesota Corporation and B. J. Loftsgaarden, an individual of substantial means.

(b) Alotel, Incorporated will at all times maintain net worth, exclusive of its interest in Alotel Associates or any other limited partnership, in excess of 15% of total contributions to all such partnerships in the event B. J. Loftsgaarden ceases to act as an additional general partner.

(c) The limited partners of Alotel Associates will at no time own in excess of twenty (20) percent of the capital stock of Alotel, Incorporated;

(d) Alotel Associates, will invest in and continue to carry on the business of one motel;

(e) The other facts and operations described and proposed in the Organizational Documents and the Offering Memorandum prepared in connection with the offering of the Limited Partnership Units will at all times be true.

Based upon the foregoing items, and subject to the foregoing provisos, we are of the opinion that Alotel Associates will be regarded as a Partnership for Federal Income Tax purposes and will not be treated as an association taxable as a corporation.

Yours very truly,
DOUGLASS, BELL, DONLIN,
SHULTZ & PETERSEN

April 25, 1973

Mr. B. J. Loftsgaarden
2540 North Cleveland Drive
Saint Paul, Minnesota 55113

Gentlemen:

The accompanying forecasts of Alotel Associates (a limited partnership) for the years 1973 through 1992, shown on pages 2 through 6, were prepared to provide estimates of net cash flow returned to partners and tax consequences of projected operations to limited partners. The forecast statements have been prepared using the assumptions and rationale set forth on pages 7 to 13.

We have reviewed the assumptions and rationale underlying the forecast financial statements. We are un-

able to evaluate the reasonableness of the forecasted occupancy rates or the forecasted 4% annual increase in net operating revenue (Note 3). We are also unable to evaluate the reasonableness of the forecasted refinancing of the project in 1986 (Note 10). Further, we believe that the lives assigned to the building and to the components (Note 7) may be aggressive. All other assumptions and rationale appear reasonable and appropriate for the purpose of this forecast.

Since forecasts are based on assumptions about circumstances and events that have not yet taken place, they are subject to the variations that may arise as future operations actually occur. Accordingly, we cannot give assurance that the predicted results will actually be attained.

Touche Ross & Co.
Certified Public Accountants

ALOTEL ASSOCIATES FORECAST OF CASH FLOW AND TAXABLE INCOME OR LOSS

	Eight months ending December 31, 1973	1974
CASH SOURCES:		
Net operating revenue (Note 3)		$296,170
Working capital (Note 16)		33,240
TOTAL		329,410

CASH REQUIREMENTS:		
Real estate taxes (Note 4)		8,800
Mortgage principal (Note 10)		5,630
Mortgage interest (Note 10)		219,384
Loan principal (Note 10)		40,666
Loan interest (Note 10)		17,730
Management fee (Note 5)		
Replacement reserve payments (Note 10)		37,200
Land rental (Note 6)		
TOTAL		329,410
NET CASH FLOW (Note 11)		$ —
TAXABLE INCOME OR LOSS:		
Net cash flow		
Add:		
Mortgage principal payments		5,630
Loan principal payments		40,666
Replacement reserve payments		
(Deduct):		
Depreciation (Note 7)	($103,192)	(275,206)
Amortization of loan and franchise fees		(542)
Real estate taxes accrued in excess of amount paid	(2,100)	(31,200)
Construction period losses (Note 8)	(302,600)	
Working capital applied		(33,240)
TAXABLE INCOME OR (LOSS) (Notes 11 and 17)	($407,892)	($293,892)

This projection is dependent on future events and may be significantly affected by changes in economic and other circumstances.

The accompanying assumptions and rationale are an integral part of this forecast.

ALOTEL ASSOCIATES FORECAST OF CASH FLOW
AND TAXABLE INCOME OR LOSS

	1982	1983	1984
CASH SOURCE:			
Net operating revenue	$706,116	$727,513	$748,910
CASH REQUIREMENTS:			
Real estate taxes	52,800	54,400	56,000
Mortgage principal	34,903	38,367	42,175
Mortgage interest	201,239	197,775	193,967
Loan principal	44,041,	47,696	51,655
Loan interest	14,355	10,700	6,741
Management fee	90,957	94,717	98,479
Replacement reserve payments			
Land rental	37,200	37,200	37,200
TOTAL	475,495	480,855	486,217
NET CASH FLOW	$230,621	$246,658	$262,693
TAXABLE INCOME OR LOSS:			
Net cash flow	$230,621	$246,658	$262,693
Add:			
Mortgage principal payments	34,903	38,367	42,175

Loan principal payments	44,041	47,696	51,655
Replacement reserve payments			
(Deduct):			
Amortization of loan and franchise costs	(875)	(875)	(875)
Depreciation	(136,051)	(124,715)	(113,430)
TAXABLE INCOME OR (LOSS)	$172,639	$207,131	$242,218

This projection is dependent on future events and may be significantly affected by changes in economic and other circumstances.

The accompanying assumptions and rationale are an integral part of this forecast.

ALOTEL ASSOCIATES
SUMMARY OF INVESTMENT
PER $35,000 UNIT

(for 54% tax bracket investor — combined federal and Minnesota rate)

Year	Investment	Partnership taxable income or (loss) (Note 17)	Income tax savings or (cost) (Note 17)	Investment credit (Note 15)
1973	$35,000	($20,395)	$11,013	$2,432
1974		(14,695)	7,935	
1975		(2,960)	1,598	
1976		(476)	257	
1977		1,929	(1,042)	
1978		4,997	(2,698)	
1979		7,222	(3,900)	
1980		5,514	(2,978)	1,225

1981		6,935	(3,745)	
1982		8,632	(4,661)	
1983		10,357	(5,593)	
1984		12,111	(6,540)	
1985		13,898	(7,505)	
1986		15,604	(8,426)	
1987		6,826	(3,686)	1,225
1988		7,719	(4,168)	
1989		9,587	(5,177)	
1990		11,226	(6,062)	
1991		12,896	(6,964)	
1992*				
	$35,000	$96,927	($52,342)	$4,882

*Note 13

This projection is dependent on future events and may be significantly affected by changes in economic and other circumstances.

The accompanying assumptions and rationale are an integral part of this forecast.

ALOTEL ASSOCIATES
PROJECTED SOURCE AND APPLICATION OF FUNDS THROUGH THE END OF CONSTRUCTION PERIOD (DECEMBER 31, 1973)

SOURCE

Mortgage proceeds	$2,310,000
Loan proceeds	240,000
Capital contributions by investing limited partners	700,000
Sale of land	300,000
	$3,550,000

APPLICATION

Land		$ 300,000
Building and costs allocated to building:		
Building	$2,000,000	
Paving and landscaping	60,000	
Architect's fee	90,000	
Legal and accounting	5,000	
Tests and permits	7,500	
Overhead and profit	103,900	2,266,400
Furniture and fixtures		600,000
Intial franchise fee to be amortized over the life of the building		15,000
Costs to be amortized over the term of the mortgage:		
Title insurance	2,500	
Related legal fees	3,500	6,000
Costs to be deducted through construction period:		
Land rent	2,800	
Sales tax on furniture, fixtures and building materials	44,000	
Construction loan interest	130,000	
Interim financing fee	23,100	
Legal and accounting	10,000	
Commitment fee	46,200	
Mortgage registration tax	3,500	
Appraisal fee	3,000	
Pre-opening expenses	40,000	302,600
Working capital		60,000
		$3,550,000

This projection is dependent on future events and may be significantly affected by changes in economic and other circumstances.

The accompanying assumptions and rationale are an integral part of this forecast.

ALOTEL ASSOCIATES

FORECAST OF NET OPERATING REVENUE AT VARIOUS OCCUPANCY LEVELS (NOTE 3)

Operating revenues:

- Rooms
- Telephone
- Newsstand
- Guest laundry and valet
- Miscellaneous machines
- Other income
- Food and beverage

Operating expenses:

- Room expenses
- Telephone
- Newsstand
- Guest laundry and valet
- Miscellaneous machines
- Food and beverage
- Administrative
- Advertising
- Utilities
- Repairs and maintenance
- Insurance
- Food and beverage payroll
- Other restaurant expenses
- License royalties

Net operating revenue

This projection is dependent on future events and may be significantly affected by changes in economic and other circumstances.

The accompanying assumptions and rationale are an integral part of this forecast.

ASSUMPTIONS AND RATIONALE

1. Classification of partnership

The forecast assumes that the organization will be treated for income tax purposes as a partnership. If instead the organization were classified "an association" and taxed as a corporation, many of the advantageous tax attributes would be lost.

The general partners are Alotel, Incorporated and B. J. Loftsgaarden, an officer and majority shareholder of the corporate general partner. Although no advance ruling will be requested from the Internal Revenue Service, it is believed that the organization will be classified as a partnership for income tax purposes.

2. Method of accounting

The Limited Partnership will use the accrual basis method of accounting in keeping its books and in reporting for income tax purposes.

3. Operations

The partnership will own and operate a Ramada Inn in Rochester, Minnesota. The Inn will contain 170 guest rooms in addition to a restaurant and commercial areas. It is assumed that the partnership will enter into a contract with an affiliate of the general partner to acquire the land and furniture and fixtures and construct the building for a total fee of $3,450,000 less all interest, fees, and expenses (other than pre-opening expenses) incurred by the partnership during the construction period.

The forecast of net operating revenue at various occupancy levels was based on the experience of comparable Ramada Inn projects and was furnished to the general partners by Ramada Inns, Inc.

The projected net operating revenue for 1974 is based on a 50% occupancy rate. An occupancy rate of 75% beginning January 1, 1975 is assumed in the projections.

It has been assumed that net operating revenue will increase approximately $22,500 per year (4% per year based on 1975 net operating revenue).

4. Real estate taxes

Real estate taxes in the forecast for 1973 and 1974 are based upon anticipated valuation of the property at tax valuation dates and available information on current taxes. It has been assumed that real estate taxes increase approximately $1,600 per year (4% per year based on 1975 real estate taxes).

5. Management fee

A management fee payable to the general partner has been provided in the forecast. The fee is the sum of the following:

(1) 10% of the difference between net operating revenue and real estate taxes, limited however to 50% of net profit (before depreciation and the payment of any management fee), plus

(2) 10% of net cash flow (after payment of the management fee in (1) above.)

6. *Land rental*

The general partner has leased a portion of the land to be used for the project at an annual rental rate of $4,200 per year. The lease has seven years remaining of the original term and is subject to three additional terms of five years each at the same annual rental rate. The general partner has reached an agreement with the lessor for an additional term of 13 years. The lease provides that the lessee has the first option to purchase the property if the lessor desires to sell the property.

It has been assumed that the remaining land necessary for the project will be purchased in May of 1973 for $300,000 and will be sold for the same amount on December 31, 1973. It has also been assumed that the land would be leased back to the partnership for $33,000 a year under terms similar to those under the existing lease.

7. *Depreciation*

Acquisition and construction costs have been allocated to components and useful lives assigned and depreciation methods selected as follows:

	Cost	Life	Depreciation method
Building	$1,290,411	40 years	150% declining balance
Mechanical, electrical, roof, pool and landscaping	800,460	20 years	150% declining balance
Elevators	94,739	15 years	150% declining balance
Furniture and fixtures	600,000	7 years	Sum-of-the-years digits
Painting	80,790	4 years	150% declining balance
	$2,866,400		

Separation of building costs into components for purposes of depreciation is permitted for tax purposes. However, there are no established guidelines for the useful lives of the components and, therefore, the lives used in the forecast are subject to challenge by the Internal Revenue Service.

Eligibility for use of accelerated depreciation methods requires original use of the property by the Limited Partnership. Depreciation is assumed to begin December 1, 1973.

The Internal Revenue Code allows first-year depreciation (in addition to other depreciation) equal to 20% of the investment in tangible personal property for the year. The additional first-year depreciation is limited to $4,000 per taxpayer ($2,000 if married and filing separately). The depreciation expense includes additional first-year depreciation of $80,000 in 1973, $70,000 in 1980 and $70,000 in 1987.

8. Construction period losses

Construction period losses of $302,600 are forecasted for 1973.

It is anticipated that construction on the project will begin in May of 1973 and will be completed by December of 1973. The hotel may be opened for occupancy in December of 1973 but it is anticipated that the net income from oper-

ations for 1973 would be an insignificant amount. Therefore no revenues or expenses from hotel operations for 1973 have been shown in the forecast.

9. Basis of limited partners

The mortgage loan will be made to the Limited Partnership on a nonrecourse basis, i.e., the lender agrees to look only to the mortgaged property for repayment of the loan. Under existing regulations, a limited partner may add his proportionate share of such a mortgage loan to his cash investment in determining the basis in his partnership interest. This will enable him to receive cash distributions generated by the Limited Partnership in excess of his cash investment without recognizing currently an equivalent amount of taxable income.

10. Financing

It has been assumed that, based on discussions the general partner has had with financial institutions, the limited partnership will obtain $2,310,000 of construction financing at an interest rate of 9½%. It has also been assumed that a permanent mortgage of $2,310,000 at 9½% interest with an amortization schedule based on 28 years, but a term of 12 years, will be closed on September 1, 1974.

For purposes of the projection it has been assumed that upon retirement of the mortgage at its maturity (1986), a new mortgage of 148% (i.e. 4% per year increase from 1975 through 1986) of the original mortgage or $3,418,800 with similar terms will be placed on the property.

The proceeds from the refinancing (after repayment of the original mortgage) will be distributed to the partners.

It has also been assumed that a $240,000, five year, 8% loan, repayable in equal monthly installments will be obtained in January of 1974 and similar loans will be obtained in 1981 and 1988. The proceeds of the loan in 1981 together with assumed replacement reserve payments in 1979 and 1980 of $55,000 each year will be used to replace worn out furniture and fixtures. The same assumption is made regarding the proceeds of the loan received in 1988 and the replacement reserve payments for 1986 and 1987.

11. Division of income or losses and cash flow

The limited partners will have a 100% aggregate interest in the income or losses and net cash flow from operations.

The proceeds from a sale or refinancing of the project will be distributed to the limited partners to the extent of their original capital contribution ($700,000). The excess, if any, of the proceeds over $700,000 will be distributed 75% to the limited partners and 25% to the general partners.

12. Application of minimum tax on tax preference items

The Internal Revenue Code imposes a 10% tax (in addition to other taxes) on certain tax preference items. The tax preference items which will affect the partners are:

> The excess of accelerated over straight-line depreciation on real property. For each $35,000 investment unit, this item approximates $200 in 1973, $2,200 in 1974, $1,400 in 1975 and decreases in subsequent years.

The 50% capital gains deduction of individuals (assuming a capital gain is realized at the time of sale of the motel complex).

The 10% tax is imposed only on the excess of a taxpayer's tax preference items over the sum of: $30,000 ($15,000 in the case of a married taxpayer filing a separate return), his federal income tax otherwise computed for the year and carryovers of federal income taxes paid in prior years.

Maximum tax on earned income

Taxpayers otherwise eligible for the 50% maximum tax on earned income may lose part of the benefit therefrom, if total tax preference items (including those generated by this investment) exceed $30,000.

13. Taxation of gain from sale

A portion of the gain on sale of the property may be taxed as ordinary income under the "depreciation recapture" provisions of the Code. In the case of a building, only the excess of accelerated depreciation over straight-line depreciation is subject to recapture.

No attempt has been made to forecast a price at which the project might be sold in 1992 or at any other time, because the future events which would determine such a price are hightly uncertain and unpredictable. If the project were sold in 1992 the amount of gain *in excess of any cash received* would be $115,836 per $35,000 investment unit and the tax payable on that gain would be $32,223 computed as follows:

Cumulative cash distributions		$247,763
Less:		
Investment	$ 35,000	
Cumulative taxable income	96,927	131,927
Gain on sale		$115,836
Depreciation recapture - taxed as ordinary income	$ 3,510 at 54%	$ 1,895
Remainder - taxed as capital gain	112,326 at 27%	30,328
Total Tax		$ 32,223

No effect has been given to a possible minimum tax on tax preference items. The capital gains tax has been computed by using a rate of one-half of the assumed tax bracket of the limited partner.

14. Excess investment interest

Beginning in 1972, the Revenue Code limits the deductibility of excess investment interest. Interest paid in the active conduct of a trade or business is not considered investment interest. Assuming that in each year the motor hotel operating expenses (exclusive of land rent, real estate taxes, interest and depreciation) exceed 15 percent of the gross rental income, the operations of this motor hotel project should be considered the conduct of a trade or business and there should be no limitation on the deductibility of interest paid by the Limited Partnership.

15. Investment tax credit

The "summary of investment" reflects an investment tax credit based on a limited partner's share of the part-

nership investment in "eligible" property (tangible personal property and elevators). The investment tax credit is available to a limited partner as a credit against his federal income tax liability, but may be limited if his total investment credits exceed the lesser of his federal tax liability or $25,000 ($12,500 if married and filling separately).

16. Working capital

It has been forecasted that at the end of the construction period the Partnership will have working capital of $60,000 after payment of all construction and acquisition costs, fees and other expenses. It has been assumed that $33,240 of working capital will be used to cover the projected cash deficit from operations for 1974.

17. Proposed federal income tax legislation

The forecasted income tax consequences to an investor are based on current tax law, case history, and interpretive rulings. If the administration's tax proposals regarding "limitation on artificial accounting losses" (as presented to the House Ways and Means Committee on April 30, 1973) become law, it could result in the disallowance of deductions in excess of income generated by the project each year. However, such excess deductions could be carried forward to offset future income of the project. The tax proposals exempt investments where commitments have been made on or before April 30, 1973. It is unclear if investment in this project would be exempted from the proposed legislation. If such legislation was enacted and affected this project, the effect on an investor in this project

could be to eliminate the forecasted income tax savings for the years 1973 through 1976 with a corresponding elimination of the forecasted income tax cost for the years 1977 through 1982.

ARTICLES OF LIMITED PARTNERSHIP OF ALOTEL ASSOCIATES

THESE ARTICLES OF LIMITED PARTNERSHIP, made and entered into this ..... day of ....., 1973, by and between Alotel, Incorporated, a Minnesota corporation, B. J. Loftsgaarden and the persons executing counterparts hereof as limited partners.

WITNESSETH:

WHEREAS, the parties hereto desire to constitute themselves as a Limited Partnership pursuant to Minnesota Statutes, Chapter 322, entitled "Limited Partnerships"; and

WHEREAS, the parties desire to form this Limited Partnership for the purpose of constructing and thereafter operating for income a motel in Rochester, Minnesota.

WHEREAS, the parties desire to provide for (i) the holding of title to the Property, (ii) division of the profits and losses from the operation or sale thereof, (iii) restrictions on disposition and management of the Property, and (iv) various other matters relating thereto;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable considerations, the parties hereto agree as follows:

ARTICLE 1.
FORMATION OF LIMITED PARTNERSHIP

1.1) The parties hereto hereby form a Limited Partnership pursuant to the provisions of the Uniform Limited Partnership Act of the State of Minnesota, (Chapter 322, Minnesota Statutes) as amended.

ARTICLE 2.
NAME AND PLACE OF BUSINESS

2.1) The name of the Partnership shall be Alotel Associates. The principal place of business shall be located in Rochester, Minnesota, or such other place as the General Partner may designate by giving written notice to the Limited Partners not less than ten (10) days preceding any such change.

ARTICLE 3.
CERTIFICATE OF LIMITED PARTNERSHIP

3.1) The parties hereto understand that a Certificate of Limited Partnership will be prepared pursuant to the provisions of Section 322.02 of the Uniform Limited Partnership Act of Minnesota containing certain of the information set forth herein. The General Partners will cause the Certificate to be recorded in the office of the Register of Deeds of the county in which the principal place of business of the Partnership is situated.

ARTICLE 4.
DEFINITIONS

4.1) For purposes of these Articles the following words and terms shall have the indicated meanings, unless clearly designated otherwise:

(01) NET PROFITS AND NET LOSSES. The terms "Net Profits" and "Net Losses" mean net profits and net losses as determined by generally accepted accounting principles.

(02) CAPITAL ACCOUNT. The capital account of a Partner at any time means the total cash or other property contributed by the Partner to the Partnership plus profits allocated and less losses allocated and cash or other property previously distributed.

(03) GENERAL PARTNER. The "General Partner" means Alotel, Incorporated, and B. J. Loftsgaarden. The "Corporate General Partner" shall mean Alotel, Incorporated and the "Individual General Partner" shall mean B. J. Loftsgaarden. References to the "General Partner" shall include either or both of the general partners.

(04) LIMITED PARTNERS. "Limited Partners" means the signatories hereto purchasing a Unit or Units.

(05) UNIT. "Unit" means a Limited Partnership Unit as authorized by Section 8.2 hereof.

(06) PARTNERSHIP. "Partnership" means the Limited Partnership of Alotel Associates.

(07) PROPERTY. The "Property" means the real property to be acquired or leased by the Partnership and upon which will be built and operated the motel hereinbefore mentioned; the Property shall include such motel.

(08) ARTICLES. The "Articles" means the Articles of Limited Partnership of Alotel Associates.

(09) PARTNER. A "Partner" means and includes the General Partner and all Limited Partners.

(10) CERTIFICATE. The "Certificate" means the Certificate of Limited Partnership of Alotel Associates.

(11) CASH FLOW. "Cash Flow" shall mean net income plus depreciation and amortization, expenses accrued and not paid; less principal payments on notes and mortgages, and replacement reserve payments.

ARTICLE 5.
PURPOSES OF THE PARTNERSHIP

5.1) The principal purpose of this Limited Partnership is to acquire, maintain, operate, and dispose of the Property, and to engage in any and all general business activities relating or incidental thereto. The Partnership shall engage in business only in the State of Minnesota and shall engage in no other business.

ARTICLE 6.
PARTNER'S NAMES AND ADDRESSES

6.1) GENERAL PARTNER. The names and common business addresses of the General Partners are Alotel, Incorporated, (a Minnesota corporation), 2361 Highway 36, St. Paul, Minnesota, 55113; B. J. Loftsgaarden, 2540 North Cleveland Drive, St. Paul, Minnesota 55113.

6.2) LIMITED PARTNERS. The name and address of each Limited Partner in the Partnership shall be set forth on a document evidencing his acceptance and adoption of each and every provision of these Articles.

ARTICLE 7.
TERM OF PARTNERSHIP

7.1) The term of the Partnership shall commence on the date of the recording of the Certificate in the office of the Register of Deeds in the County of Olmsted, State of Minnesota, and shall continue thereafter until the 31st day

of December, 2002, or until the Property is sold, or until terminated as hereinafter provided, whichever date is the earliest.

ARTICLE 8.
PARTNERSHIP CAPITAL CONTRIBUTIONS

8.1) GENERAL PARTNERS. The General Partners shall make no capital contribution to the Partnership.

8.2) LIMITED PARTNERSHP UNITS. There are hereby authorized 20 Limited Partnership Units of $35,000 each. Each subscriber shall become a Limited Partner at such time as he has (a) contributed the sum of $35,000 to the Partnership for each Unit purchased; (b) he and either of the General Partners have executed the Instrument of Execution; and (c) the Certificate has been filed or amended as provided in Minnesota Statutes Chapter 322.

8.3) WITHDRAWAL BY LIMITED PARTNER. No Limited Partner shall withdraw any of his capital without the consent of the General Partner.

8.4) INDIVIDUAL ACCOUNTS. An individual account shall be maintained for each Partner.

8.5) LIABILITY OF LIMITED PARTNER. No Limited Partner shall be personally liable for any of the debts of the Partnership or any of the losses thereof in excess of the amount contributed by him to the capital of the Partnership under ARTICLE 8 hereof. No Limited Partner shall be responsible for any of the debts or losses of any other Partner.

ARTICLE 9.
ALLOCATION OF PROFITS AND LOSSES

9.1) FISCAL YEAR. For purposes of Partnership accounting and for income tax reporting, the Partnership shall adopt a fiscal year ending on the last day of December of each year.

9.2) ALLOCATION OF NET PROFITS AND LOSSES. Profits and losses of the Partnership shall be allocated as follows:

(01) Net profits and net losses other than from the sale or condemnation of all or part of the Property shall be allocated 100% to the Limited Partners.

(02) Net profits upon sale or condemnation of all or part of the Property to the extent of net cash proceeds to the Partnership plus cash distribution made pursuant to Section 10.3 shall be allocated in accordance with the provisions of Section 21.1(04); to the extent that such net profit exceeds the net cash proceeds to the Partnership plus cash distributions made pursuant to Section 10.3, it shall be allocated 100% to the Limited Partners. Net losses upon sale or condemnation of the Property shall be allocated 100% to the Limited Partners.

9.3) ALLOCATION OF PROFIT OR LOSS AMONG LIMITED PARTNERS. Amounts allocable to Limited Partners pursuant to Section 9.2 shall be allocated in the ratio which the number of Units held by each of them bears to the number of Units held by all of them.

ARTICLE 10.
COMPENSATION AND DISTRIBUTIONS

10.1) COMPENSATION TO GENERAL PARTNERS. The General Partners shall receive as compensa-

tion for their services in managing the Property and business of the Partnership:

(01) A base management fee equal to 10% of the Net Profits of the Partnership before interest expense, management fees, depreciation and amortization, land rental, and income taxes. Such base management fee shall not exceed 50% of such Net Profits before depreciation and management fee.

(02) An additional management fee equal to 10% of cash flow of the Partnership.

10.2) DISTRIBUTION OF CASH GENERALLY. Subject to the maintenance of a sound financial position the General Partners shall distribute accumulated cash generated other than from the sale or condemnation of the Property, and other than from the refinancing of all or a substantial portion of the Property, to the holders of Units of record on the last day of each fiscal year as soon as practicable after the end of each fiscal year.

10.3) DISTRIBUTION OF CASH UPON REFINANCING. If the Property shall be refinanced by subjecting it to new, additional, or substitute mortgages or security interests subsequent to the initial acquisition and construction of the Property, and if the Partnership shall receive cash in excess of that used to satisfy existing mortgages and security interests upon such refinancing, then cash distributions made during the year of such refinancing or immediately following the year of such refinancing shall be made in accordance with the provisions of Section 21.1(04) to the full extent of such excess cash. All amounts so distributed shall be deducted from the amounts otherwise distributable pursuant to Section 21.1(04) upon the sale or condemnation of the Property and the termination of the Partnership.

ARTICLE 11
LIMITATION UPON WITHDRAWAL

11.1) RIGHT TO WITHDRAW. No Limited Partner shall have the right to withdraw or reduce his contribution to the capital of the Partnership. However, such withdrawal may be accomplished pursuant to the provisions of ARTICLE 6 hereafter.

11.2 LIMITATIONS UPON PROPERTY AND PRIORITY. No Limited Partner shall have the right to demand or receive property other than cash in return for his contribution, and no Limited Partner shall have priority over any other Limited Partner, either as to contributions of capital or as to compensation by way of income, except as their interests may appear in the capital accounts of the Partnership.

ARTICLE 12.
STATUS OF LIMITED PARTNERS

12.1) LIABILITY. A Limited Partner shall not be bound by, or be personally liable for, the expenses, liabilities or obligations of the Partnership.

12.2) LACK OF CONTROL. A Limited Partner shall take no part in or interfere in any manner with the conduct or control of the business of the Partnership and shall have no right or authority to act for or bind the Partnership.

ARTICLE 13.
MANAGEMENT, DUTIES, POWERS, RESTRICTIONS OF THE GENERAL PARTNER

13.1) GENERAL. The General Partners shall be responsible for the management of the Partnership busi-

ness with all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith.

13.2) SPECIFIC. In addition to any other rights and powers which they may possess, the General Partners shall have all specific rights and powers required or appropriate to management of the Partnership business which, by way of illustration but not by way of limitation, shall include the following rights and powers.

(01) To acquire, hold and dispose of any real property, interest therein, or appurtenant thereto, as well as personal or mixed property connected therewith, including the purchase, lease, development, improvement, maintenance, exchange, trade or sale of such properties, at such price, rental or amount, for cash, securities or other property, and upon such terms, as it deems, in its absolute discretion, to be in the best interests of the Partnership.

(02) To borrow money and, if security is required therefor to mortgage, or subject to any other security device any portion of the property of the Partnership, to obtain replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage or other security device, all of the foregoing at such terms and in such amounts as it deems, in its absolute discretion, to be in the best interests of the Partnership.

(03) To place record title to, or the right to use, Partnership assets in the name or names of a nominee or nominees, or in the name of either General Partner for any purpose convenient or beneficial to the Partnership.

(04) To acquire and enter into any contract of insurance which the General Partners deem necessary and proper for the protection of the Partnership, for the conservation of its assets, or for any purpose convenient or beneficial to the Partnership.

(05) To employ from time to time persons, firms, or corporations for the operation and management of the Partnership and the Property, including, without limitation, operating personnel, rental agents, accountants, insurance brokers, real estate brokers, building management agents, loan brokers, and attorneys on such terms and for such compensation as it shall determine, notwithstanding the fact that its officers and directors or subsidiaries and affiliates thereof, may have a financial interest in such firms or corporations, such compensation to be an expense of the Partnership.

13.3) LIMITATIONS. The General Partners shall have all the rights and powers and be subject to all the restrictions and liabilities of a Partner in a partnership without limited partners. The General Partners have no authority without the written consent or ratification of the specific act by all the Limited Partners to:

(01) Do any act in contravention of the Certificate and these Articles;

(02) Do any act which would make it impossible to carry on the ordinary business of the Partnership;

(03) Confess a judgment against the Partnership;

(04) Possess property or assign the rights of the Partnership in specific property for other than a Partnership purpose;

(05) Admit a person as a General Partner except as otherwise provided in these Articles;

(06) Admit a person as a Limited Partner except as otherwise provided in these Articles.

13.4) COMPETITION. Any of the Partners, or any shareholder, officer, director, employee, or other person holding a legal beneficial interest in an entity which is a General Partner or a Limited Partner herein, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the Partnership nor any Partner shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Nothing herein contained shall require a General Partner to give notice to the Limited Partners or any of them as to such other business ventures or to present to the Partnership or to any of the Limited Partners any opportunity of any kind or nature whatsoever, even though such opportunity might come to the attention of or be available to a General Partner through its participation in this Partnership. Each Partner waives any right which he may have against the others for capitalizing on or taking advantage of information learned as a consequence of an association with the affairs of the Partnership.

ARTICLE 14.
CONVEYANCE

14.1) Any deed, mortgage, bill of sale, lease, contract of sale or other instrument purporting to convey or encumber the assets of the Partnership in their entirety or any portion of any real or personal poperty at any time held in

its name, shall be signed by either or both General Partners on behalf of the Partnership, and no other signature shall be required.

ARTICLE 15.
BOOKS, RECORDS, ACCOUNT AND REPORT

15.1) BOOKS OF ACCOUNT. At all times during the existence of the Partnership the General Partners shall keep or cause to be kept by an agent full and true books of account, in which shall be entered fully and accurately each transaction of the Partnership. Such books of account, together with a certified copy of the Articles of Limited Partnership and any amendments thereto, shall at all times be maintained at the principal office of the Partnership and shall be open to the reasonable inspection and examination of all Partners or their duly authorized representatives. Any Partner herein has the right to inspect and copy said books, records, and a list of Unit holders provided that he owns an interest in the Partnership at the time of inspection and that such inspection is made in good faith without any intent to damage the Partnership or any of its Partners in any manner. The General Partners shall, upon reasonable request and payment of copying cost, mail to any partner a list of then Unit holders of the Partnership together with their addresses of record and the number of Units held by each of them.

15.2) EXAMINATION BY ACCOUNTANT. The General Partners shall have the books and records of the Partnership examined and income tax returns prepared for the Partnership by an independent Certified Public Accountant, and a report indicating the respective Limited

Partner's share of net profits or losses and capital gains or losses, all as defined and reflected on said Partnership income tax return shall be distributed to the Partners within ninety days after the close of the taxable year of the Partnership for which such return was prepared.

ARTICLE 16.
BANK ACCOUNTS

16.1) All funds of the Partnership are to be deposited in the Partnership name in such bank account or accounts as shall be designated by the General Partners. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partners may designate.

ARTICLE 17.
ASSIGNMENT OF PARTNERSHIP INTEREST: WITHDRAWAL

17.1) GENERAL PARTNER. The General Partners shall not assign, pledge, encumber, sell or otherwise dispose of any rights in specific Partnership property except in connection with such transfer of the rights of all Partners in the same property. The General Partners may, however, at their discretion and without the consent of other Partners, assign, pledge, encumber, sell, or otherwise dispose of their respective shares of the net profits and net losses of the Partnership, if any.

17.2) LIMITED PARTNER. The interest of a Limited Partner may not be assigned, mortgaged, sold or otherwise disposed of, and no Limited Partner shall withdraw or have the right to substitute an assignee in his place except as hereinafter provided:

(01) No assignee or distributee of the whole or any portion of a Limited Partner's interest in the Partnership shall have the right to become a Substituted Limited Partner in place of his predecessor in interest with respect to the whole or any portion of said interest without the written consent of a General Partner.

(02) As a condition of his or her admission as a Substituted Limited Partner with respect to the whole or any portion of the interest of his predecessor in interest, such assignee or distributee shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partners as the General Partners shall deem necessary or desirable to effectuate such admission and to confirm the agreement of the person being admitted as such Substituted Limited Partner to be bound by all of the terms and provisions of the Articles of Limited Partnership as the same may have been amended and then in force. Such assignee or distributee shall pay all reasonable expenses in connection with such assignment and substitution and amendments to the Certificate and Articles of Limited Partnership if necessary or desirable in connection therewith.

(03) The General Partner's failure or refusal to grant such consent shall not affect the validity and effectiveness of any such instrument as an assignment of the right to receive Partnership distributions applicable to such interest under the Articles, provided such instrument is in form satisfactory to the General Partners, and a duly executed and acknowledged counterpart is filed with the Partnership, and, provided further, that the Partnership interest, or any portion thereof, is not being assigned or transferred to a person below the age of twenty-one (21) years or to a person theretofore adjudged to be insane or in-

competent. Any such attempted assignment, transfer, pledge, or hypothecation shall be void and ineffectual and shall not bind the Partnership.

(04) Nothwithstanding any other provision of these Articles, upon the death or legal disability of any Limited Partner, his legal representative shall have all the rights of a Limited Partner for the purpose of settling his estate and such power as the deceased or disabled had to constitute his assignee a substituted Limited Partner. The estate of a deceased or legally disabled Limited Partner shall be liable for all his liabilities as a Limited Partner.

17.3) NON-PERSON LIMITED PARTNER. The authorized representative of a Limited Partner who is not a person upon the dissolution or other cessation of the Limited Partner to exist as a legal entity, shall have all the rights of a Limited Partner for the purpose of effecting the orderly winding up and disposition of the business of such entity and such power as such entity possessed to constitute a successor as an assignee of its interest in the Partnership and to join with such assignee in making application to substitute such assignee as a Limited Partner.

17.4) ELECTION BY GENERAL PARTNERS. The General Partners may elect to treat an assignee who has not become a Substituted Limited Partner as a Substituted Limited Partner in the place of his assignor should it deem, in its sole discretion, that such treatment is in the best interests of the Partnership for any purpose whatsoever. No consent of any of the Limited Partners is required to effect the substitution of a Limited Partner, except that a Limited Partner who assigns his interest must evidence his intention that his assignee be admitted as a

Substituted Limited Partner in his place and execute any instruments required in connection therewith.

ARTICLE 18.
TO WHOM DISTRIBUTIONS MADE

18.1) Each Partner, and any other persons having business with the Partnership, need deal only with Partners named herein or admitted pursuant hereto. They shall not be required to deal with any other person by reason of an assignment or transfer by a Partner or by reason of the death of a Partner, except as otherwise provided in these Articles. In the absence of a transfer in accordance with these Articles of the legal ownership of the Partnership interest of a transferring or deceased Limited Partner, any payment by the Partnership to the one shown on the Partnership records as a Partner or to his legal representatives, or his assignee of the right to receive Partnership distributions shall acquit the Partnership of all liability to any other person who may be interested in such payment by reason of an assignment by the Partner or by reason of his death, or for any other reason.

ARTICLE 19.
VOTING AND MEETINGS

19.1) VOTING. Notwithstanding anything herein to the contrary, the Limited Partners are hereby given the right to vote as hereinafter provided.

(01) TO TERMINATE AND TO AMEND. Upon the vote of the holders of two-thirds of the then outstanding Units the certificate and these Articles of Limited Partnership may be amended or the Partnership may be terminated and its assets sold; provided that no such amendment which

affects the compensation, share of receipts, income or distributions, duties, or obligations of the General Partners under this Agreement, shall be effective or binding upon a General Partner without the prior written consent of such General Partner.

(02) TO REMOVE AND REPLACE GENERAL PARTNERS. Upon the vote of the holders of two-thirds of the then outstanding Units either or both of the General Partners may be removed. If both General Partners are removed, one or more new general partners shall be elected within 60 days following such removal upon the vote of the holders of two-thirds of the then outstanding Units, and the removal of the General Partners shall not be effective until such successor general partner or partners have been elected and have agreed to assume such position. If either or both of the General Partners is removed pursuant to the power of removal herein provided, for any reason whatsoever, the value of the interest of the removed General Partner to share in or receive fees whether or not measured by Partnership receipts, income or distribution, to receive any portion of current receipts, income or distribution and to receive any portion of current receipts, income or distribution and to receive any portion of the proceeds upon sale or disposition of the Property, shall be determined by agreement or by arbitration (the arbiter to be agreed upon; or if none can be agreed upon, one arbiter shall be selected by the removed General Partner, one shall be selected by vote of the holders of a majority of the Units then outstanding and one shall be selected by the two others so selected; the decision of such arbiters shall be final and the fees and expenses of such arbitration shall be paid by the Partnership) and such value shall be paid in cash at the effective date of such removal.

19.2) LIABILITY AND NOTICE. Exercise of voting rights or attendance at a meeting duly called in accordance with this Agreement shall not in any way constitute any Limited Partner a general partner or impose any personal liability on any Limited Partner. Each Limited Partner shall be given not less than ten (10) days written notice of any meeting. The notice shall state the nature of the business to be transacted at the meeting; it shall further state that the Limited Partners have a right to vote on such matters; and it shall state that such vote may be cast either in person or by proxy.

19.3) CALL OF MEETINGS. Meetings of the Partnership may be called by a General Partner and shall be called by it upon the written request of the holders of ten (10%) percent of the outstanding Units.

19.4) AMENDMENTS. Amendments to the Articles may be proposed in writing by the holders of not less than ten (10%) percent of the then outstanding Units.

ARTICLE 20.
TERMINATION AND DISSOLUTION OF THE PARTNERSHIP

20.1) NO TERMINATION UPON CERTAIN EVENTS. The Partnership shall not be terminated or dissolved by the admission of a new Limited Partner or by the withdrawal, expulsion, death, insolvency, bankruptcy or other disability of a Limited Partner.

20.2) TERMINATION UPON SPECIFIC EVENTS. The Partnership shall be terminated and dissolved upon the happening of any of the following events:

(01) The expiration of the term of the Partnership;

(02) The distribution, sale or abandonment of all or substantially all of the Partnership properties and assets;

(03) The General Partner's written election to terminate with the consent of Limited Partners holding a majority of the then outstanding Units.

(04) The retirement, bankruptcy or dissolution of a General Partner, except that, if there exists another General Partner in the Partnership at the time of a General Partner's retirement, bankruptcy or dissolution, that General Partner shall have the right to continue the Partnership's business.

(05) The vote of Limited Partners as provided in Section 19.1 hereof.

(06) If for any reason 14 of the 20 Units authorized by this Agreement have not been sold and the initial payment received therefor within 180 days (the "expiration date") after the date that the first subscriber purchases a Unit.

20.3) DISSOLUTION. Upon an event of termination of the Partnership, as above provided, the General Partner shall wind up and dissolve the Partnership by selling the Partnership assets and distributing the net proceeds therefrom after the payment of Partnership liabilities, to each Partner in accordance with ARTICLE 21 hereof.

ARTICLE 21.
DISTRIBUTIONS ON DISSOLUTION

21.1) ORDER OF DISTRIBUTION. On dissolution the Partnership assets shall be distributed in the following order:

(01) To the payment of the debts to third parties and liabilities of the Partnership including accrued interest and the expenses of liquidation, including a sales commission to the selling agent, if any.

(02) To the repayment of debts to Partners or their affiliates.

(03) To the setting up of any reserves which the General Partner may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. Said reserves shall be paid over by the General Partner to a bank as escrow agent to be held for the purpose of disbursing such reserves in payment of any of the aforementioned contingencies, and at the expiration of such period as the General Partner shall deem advisable, to distribute the balance thereof in the manner provided in this Article and in the order named.

(04) To the payment to Limited Partners and the General Partner in the following manner:

(001) To the Limited Partners an amount equal to $35,000 per Unit then outstanding; however such amount distributable upon dissolution shall be reduced by amounts distributed pursuant to Section 10.3.

(002) To the Limited Partners 75% of the remainder, each Limited Partner to receive a portion in the same ratio as provided in Section 9.3; to the General Partner 25% of the remainder.

21.2) TIME. A reasonable time as determined by the General Partner not to exceed one year, shall be allowed for the orderly disposition of the assets of the Partner-

ship and the discharge of liabilities to the creditors so as to enable the General Partners to minimize any losses attendant upon liquidation.

21.3) STATEMENT AND CANCELLATION. Each of the Partners shall be furnished with a statement prepared by the Partnership's accountant, which shall set forth the assets and liabilities of the Partnership as of the date of complete liquidation and the manner in which the assets of the Partnership, including unused escrow funds, are to be distributed. Upon the General Partners complying with the foregoing distribution plan (including payment over to the escrow agent as aforesaid) it shall cause the cancellation of the Certificate and Articles of Limited Partnership.

21.4) LIMITATION OF REIMBURSEMENT BY GENERAL PARTNERS. Anything in this Agreement to the contrary notwithstanding, the General Partners shall not be personally liable for the return of the capital contributions of the Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets; nor shall a General Partner be required to pay to the Partnership or any Limited Partner any deficit in his capital account upon dissolution or otherwise.

ARTICLE 22.
ELECTION WITH REGARD TO BASIS OF SUBSTITUTED LIMITED PARTNER

22.1) The General Partners, in their sole discretion, may cause the Partnership to make or revoke the election referred to in Section 754 of the Internal Revenue Code of 1954 or any similar provision enacted in lieu thereof.

ARTICLE 23.
POWER OF ATTORNEY

23.1) SCOPE. The General Partners and each of them hereby is constituted and appointed as the attorney in fact for each Limited Partner, with full power of substitution, and with power and authority to act in the name and on the behalf of each Limited Partner in the execution, acknowledgement and filing of documents, including, but not limited to the following:

(01) Certificate of Limited Partnership, as well as amendments thereto, under the laws of the State of Minnesota and in particular, Section 322.24 and 322.25 of Chapter 322 of Minnesota Statutes or the laws of any other state in which such a certificate is required to be filed;

(02) Any certificates, instruments and documents, including fictitious name certificates, as may be required by, or may be appropriate under, the laws of any state or other jurisdiction in which the Partnership is doing or intends to do business in connection with the use of the name of the Partnership by the Partnership;

(03) Any other instrument which may be required to be filed by the Partnership under the laws of any state or by any governmental agency, or which the General Partner deems it advisable to file;

(04) Any documents which may be required to effect the continuation of the Partnership, the admission of an additional or substituted Limited Partner, or the dissolution and termination of the Partnership, provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement and;

(05) Any amendment or cancellation of the Certificate as necessitated by the affirmative vote of Limit-

ed Partners pursuant to the requirements of Section 19.1 hereof, notwithstanding a Limited Partner's negative vote therein.

23.2) EXERCISE. The power of Attorney granted by each Limited Partner to the General Partner:

(01) Is a Special Power of Attorney coupled with an interest and is irrevocable;

(02) May be exercised by a General Partner for each Limited Partner by a facsimile signature of the General Partner or by listing all of the Limited Partners executing any instrument with a single signature of the General Partner acting as attorney-in-fact for all of them;

(03) Shall survive the delivery of an assignment by a Limited Partner of the whole or any portion of his interest; except that where the assignee thereof has been approved by a General Partner for admission to the Partnership as a substituted Limited Partner, the Power of Attorney shall survive the delivery of such assignment for the sole purpose of enabling a General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

23.3) FURTHER ACTION. Pursuant to the Power of Attorney granted by the Limited Partners to the General Partners as hereinabove described, each Limited Partner authorizes said attorney to take any further action which said attorney shall consider necessary or convenient in connection with any of the foregoing, hereby giving said attorney full power and authority to do and perform each and every act and thing whatsoever requisite and necessary to be done in and about the foregoing as fully as said Limited Partner might or could do if personally present, and hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof.

ARTICLE 24.
LITIGATION

24.1) CONTROL OF LITIGATION. The General Partners shall prosecute or defend actions at law or in equity as may be necessary to enforce or protect the Partnership's interests. No Limited Partner shall be liable (i) as a General Partner unless, in addition to his rights and powers as a Limited Partner, he takes part in the control of the business, or (ii) to the Partnership or to a General Partner unless a liability of the Partnership or of a General Partner, as the case may be, is founded upon the unauthorized activity of such Limited Partner in attempting to take part in the control of the business.

24.2) FAILURE TO COMPLY WITH STATUTE. Should there at any time be a final decree, judgment or decision of any court, board or authority having jurisdiction in the premises holding that the Partnership was not validly formed as a Limited Partnership under the provisions of Minnesota Statutes, Section 322.02, in that there had not been substantial compliance in good faith with the requirements of such section, then, and in that event only, the Limited Partners and their Assignees hereby, and by these presents, renounce their interest in the profits of the business, or other compensation by way of income. In such event, the General Partners shall provide for the satisfaction of all claims and known creditors of the Partnership, first, out of any insurance proceeds available therefore, and, second, out of the assets and income of the Partnership. Should there be Partnership assets remaining after provision has been made for the satisfaction of all claims, the General Partners will either have a new Certificate and Articles of Limited Partnership properly executed and

filed in the office of the Register of Deeds of Olmsted County, Minnesota, and continue to carry on the business of the Partnership, or it will dissolve and terminate the Partnership, distributing the remaining assets of the Partnership in accordance with the provisions of these Articles.

ARTICLE 25.
AMENDMENT OF LIMITED PARTNERSHIP CERTIFICATE AND ARTICLES

25.1) The Certificate of Limited Partnership of this Partnership shall be amended whenever:

(01) There is a change in the name of the Partnership or the amount or character of the contribution of any Limited Partner;

(02) A person is substituted as a Limited Partner;

(03) An additional Limited Partner is admitted;

(04) A person is admitted as a General Partner;

(05) There is a change in the character of the business of the Partnership;

(06) There is a false or erroneous statement in the Certificate;

(07) There is a change in the time as stated in the Certificate for the dissolution of the Partnership or the return of a contribution;

(08) A time is fixed for dissolution of the Partnership or the return of a contribution, no time having been specified in the Certificate; or

(09) The Partners desire to make a change in any other statement in the Certificate in order that it shall accurately represent the agreement between them.

ARTICLE 26.
MISCELLANEOUS PROVISIONS

26.1) NOTICES. All notices provided for in these Articles shall be directed to the parties at the addresses indicated in the instrument of execution as set forth opposite their respective names or at such other places as the Partnership shall be so notified in writing by the Partners and to the Partnership at its principal office by registered or certified mail.

26.2) GOVERNING LAW. All questions with respect to the construction of these Articles and the rights and liabilities of the parties shall be determined in accordance with the applicable provisions of the laws of Minnesota.

26.3) BINDING. These Articles shall be binding upon all of the parties and their assigns, successors in interest, personal representatives, estates, heirs, or legatees.

26.4) INTERPRETATION. When the context in which words are used in these Articles indicates that such is the intent, words in the singular number shall include the plural and vice-versa, and words in the masculine gender shall include the feminine and neuter genders and vice-versa.

26.5) VALIDITY. In the event that any provisions of these Articles shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of these Articles.

26.6) CAPTIONS. Any section or paragraph titles or captions contained in these Articles are for convenience only and shall not be deemed a part of the context of these Articles.

26.7) AGREEMENT IN COUNTERPARTS. These Articles may be executed in several counterparts and all so executed shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or to the same counterpart.

26.8) ENTIRE AGREEMENT. These Articles contain the entire understanding between the General Partners and Limited Partners and supersede any prior written or oral agreements between them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Partners hereto relating to the subject matter of these Articles which are not fully expressed herein.

IN WITNESS WHEREOF, the parties hereto have signed this instrument as of the day and year first above written.

IN THE PRESENCE OF: GENERAL PARTNERS
ALOTEL,
_____ _____ INCORPORATED

_____ By: _____

_____ By: _____

_____ _____ Its Secretary Seal

_____

B. J. Loftsgaarden

STATE OF MINNESOTA)
) SS.
COUNTY OF)

On this — day of _____ , 1972, before me, a notary public within and for said County personally appeared _____ and _____ to me personally known, who, being each by me duly sworn did say that they are respectively the President and Secretary

of the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said President and Secretary acknowledged said instrument to be the free act and deed of said corporation.

_____

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF)

On this —— day of ————, 19—, before me, a notary public personally appeared B. J. Loftsgaarden, personally known to me, who stated that he executed the foregoing instrument as his free act and deed.

_____

Notary Public

ALOTEL ASSOCIATES
INSTRUMENT OF EXECUTION

1. UNIT SUBSCRIPTION — The undersigned applies for and agrees to purchase the number of Units set for above his signature and hereby tenders full payment for such Units (minimum subscription one Unit).

2. ADOPTION — The undersigned hereby specifically accepts and adopts each and every provision of the Articles of Limited Partnership (the "Articles") of ALOTEL ASSOCIATES.

3. REPRESENTATIONS AND WARRANTIES — The undersigned hereby represents and warrants that:

a. He is aware that no federal or state agency has made any findings or determination as to the fair-

ness for public investment, nor any recommendation nor endorsement of Units;

b. He recognizes that the Partnerssip has only recently been organized and has no financial or operating history and, further, that the Units as an investment involve a high degree of risk;

c. He is aware that there is no public market for Units and that it may not be possible readily to liquidate his investment;

d. He understands that the Units have not been registered with the Securities and Exchange Commission or under the securities laws of any state. The Units are being acquired for investment purposes and not for purposes of resale or other distribution;

e. He has carefully reviewed the Articles and, in making an investment in the Partnership, has relied solely thereon and on his independent investigation;

f. He has a net worth in excess of $200,000.00; or some portion of his income is subject to Federal and State income tax at a rate of 50% or more;

g. He is a resident of the State of Minnesota.

4. POWER OF ATTORNEY — The undersigned hereby makes, constitutes and appoints Alotel, Incorporated and B. J. Loftsgaarden or either of them his true and lawful attorney in fact, with full power of substitution, for the purposes and to perform in the manner set forth in Section 23 of the Articles.

IN WITNESS WHEREOF, the undersigned has executed this Instrument of Execution this — day of ————, 1973.

Number of Units (One Unit Minimum)
Total Price:

Payment Accompanying this Instrument

_____

Signature

REGISTRATION INFORMATION

Name(s) in which Units are to be registered

Address (including zip code)

Tax Identification or Social Security Number

STATE OF _____

COUNTY OF _____

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and Official Seal.

_____

Notary Public

(NOTARY PUBLIC SEAL)
My Commission Expires

INVESTMENT AND NON-DISTRIBUTION LETTER

Alotel, Incorporated
B. J. Loftsgaarden
2361 Highway 36
St. Paul, Minnesota

Re: Units of Limited Partnership
Alotel Associates

Gentlemen:

The undersigned, proposes to purchase Units of Limited Partnership in Alotel Associates and has been advised that said Units of Limited Partnership to be issued to him pursuant to such subscription have not been registered under the Securities Act of 1933 or the securities laws of any state. The undersigned has further been advised that the Units to be issued upon acceptance of such subscription will be issued pursuant to exemptions from said securities laws. It is understood that the reliance of Alotel, Incorporated, B. J. Loftsgaarden, Alotel Associaates, and all of their officers, directors and promoters on these exemptions from registration are in part dependent upon the representations made and by this letter.

With these matters in consideration, the undersigned hereby represents and warrants to Alotel, Incorporated, B. J. Loftsgaarden, Alotel Associates and to each person who may be an officer, director, promoter or person in control of any of said entities that the Units of Alotel Associates subscribed for are to be acquired for investment purposes and not for purposes of resale or other distribution. The undersigned has no present intention to sell, pledge, assign, give, or otherwise dispose of or distribute any of the Units of Limited Partnership which will be received upon acceptance of said subscription.

In order that you may to the greatest extent possible assure yourself of the intent of the undersigned as herein expressed, it is agreed that a legend may be placed on each certificate representing such Units of Limited Partnership, to the effect that the Units have not been registered and that no interest therein may be sold or otherwise disposed of in the absence of registration under the Securities Act of 1933 and any applicable state securities laws, or of an opinion of counsel satisfactory to the Partnership and its General Partner that such registration is not required.

Dated: _____ _____

Court's No. 2

April 7, 1980

Mr. B. Jerome Loftsgaarden
2540 Cleveland Avenue North
St. Paul, Minnesota 55113

Re: Randall v. Loftsgaarden
Civil No. 4-76-82
Our File No. 11,186-001

Dear Mr. Loftsgaarden:

By this letter, Dr. William C. Randall again tenders to you his limited partnership unit in Alotel Associates, a Minnesota limited partnership, in yet another attempt to rescind his purchase. He demands that you return the monies which he paid out for his limited partnership unit.

Very truly yours,

Robert A. Brunig

cc: Dr. William C. Randall
Laura S. Underkuffler, Esq.
Bradley G. Clary, Esq.
Terence M. Fruth, Esq.
George G. Seltz, Esq.
Theodore K. Abe, Esq.

Court's No. 3

FREDRIKSON, BYRON, COLBORN,
BISBEE & HANSEN
A Professional Association

4744 I D S Center
Minneapolis, Minnesota 55402
Telephone (612) 339-8331

Moorhead Office
200 F M Center
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Jack W. Hanson
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Hugh V. Olson

Harold M. Fredrikson
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Bertin A. Bisbee, Jr.
John M. Palmer
Richard R. Hansen
Jerome B. Pederson
Robert G. Weber
Robert P. Sands
Keith A. Libbey
Jerome S. Rice
Terence M. Fruth
John H. Stout
James L. Baillie
R. Bertram Greener
Warren E. Mack
John L. Powers
Quentin T. Johnson
Timothy M. Heaney
Frederick E. Finch

Thomas W. Garton
Judith L. Dowdle
John A. Satorius
Michael A. Stern
Neil A. Weikart
William J. Brody
John H. Merkle
John A. Grimstad
Eric S. Anderson
David R. Busch
Marsha A. Freeman
Thomas S. Fraser
David C. Grorud
Jack P. Helms
Karen R. Ecklund
Konrad J. Friedmann
John J. Erhart
John G. Kost
Kathleen A. Hughes

Patent Counsel
James R. Haller
Steven G. Parmellee

May 8, 1980

Mr. B. Jerome Loftsgaarden
2540 Cleveland Avenue North
St. Paul MN 55113

Re: Dr. Roger E. Austin, et al v. B. J. Loftsgaarden, et al

Dear Mr. Loftsgaarden:

By this letter, Dr. Roger E. Austin and Dr. Tom W. Anderson each tender to you their units and Dr. Myrel A. Neumann tenders to you his 1½ unit of the limited partnership Alotel Associates, a Minnesota limited partnership, in another attempt to rescind their purchases. They demand that you return the monies which they paid out for their limited partnership units.

Sincerely yours,
/s/ John A. Grimstad

JAG/rkf

UNITED STATES DISTRICT COURT
STATE OF MINNESOTA
FOURTH DIVISION

EXCERPT FROM DEPOSITION

Deposition of Anthony Pikul

DIRECT EXAMINATION

* * *

By Ms. Underkuffler:

(p. 18) Q Have you come to a conclusion or do you have an opinion as to what the market value of the partnership units was (p. 19) at the time they were sold?

A Yes, I think so. Well, on the basis of the Offering Memo and, of course, the Findings of Fact it is my opinion that the market value at the time that these units, Alotel Associates, were sold was zero.

Q Could you explain to me what facts you used to come to this conclusion? What particular facts, or how did you arrive at the conclusion that they were worth zero?

A Well, the Offering Memorandum provides certain information. For example, the land lease or the ground lease was to have been 40 years; subsequently it turned out to be just a 15-year lease and, as far as I know or have been able to determine, there was no option to buy. And that is a defect, I think, in the project because hotels require long-term leases.

Q Okay. Were there any other facts that led you to the conclusion that the units were worth zero?

A Apparently there was some miscalculation or defect in the financing plan. Instead of a firm rate of interest on the chattel mortgage or the loan which was sup-

posed to have paid for the furniture, instead of a firm rate of 9½ we ended up with a floating rate which was tied to the prime rate, and so we ended up with a very high interest rate. This apparently was not disclosed in the Offering Memorandum.

(p. 20) Q Were there any other factors that—

A Yes. There was no long-term commitment for the take-off mortgage; that is, the long-term mortgage that would follow the completion of the building until pretty late in the operation. And that, again, was tied to a floating rate certainly points above the prime. It was also for a very short period—only 12 years—with a balloon payment. This is sort of contrary to the typical financing of a hotel, which is usually a 20 or 30-year loan with a fixed rate.

Q Were there any other facts you considered important in this?

A The construction cost, carrying cost, was rather high. I believe that was brought out to be a firm rate and ended up as a floating rate I think it was four points above the prime. So by the time the project was completed I think they were paying 15 or 16 percent interest, which is, of course, a little unusual and quite high.

Q Okay. Were there any other factors?

* * *

A Well, the construction time period I think was probably (p. 21) understated because my recollection is that the memorandum said something like six or seven months and it turned out to be a year, which is more typical. I believe those are the principal factors.

Q Okay. Just for the record, the two documents you are referring to are Judge Larson's Findings of Fact and Conclusions of Law and Order dated —

A August 15th, 1980.

Q And a copy of the Offering Memorandum?

A That's correct.

Q So those were the primary factors that led to your conclusion that the units were worth zero at the time of selling?

A Yes. Because if you combine all these factors it would appear to me that the chances of success of such an enterprise would be practically nil, would be very poor.

Q Okay. When you are talking about the chances of success, how are you defining success?

A Well, I'm thinking of an operation that is completed on time, which is financed properly and has a sufficiency of working capital—which, incidentally, was another deficiency.

Q Could you explain what the deficiency was with regard to working capital?

A Well, working capital for a hotel of this size in my (p. 22) opinion should have been approximately $2,000 a room, or roughly $350,000. We had, I think, at one time $100,000, but it was further reduced because of other expenses to $60,000. So there was a deficiency of working capital. This, of course, places a burden on the partners and, unless they are very rich, of course, it makes it difficult to make the operation go.

Q When you say that when you combine these factors the chance of success was practically nil; when you define

success do you mean that it is a going operation for X number of years? Or do you have a more definite idea as to what you mean by that?

A Well, except for the early period where you are in a loss posture, sooner or later you reach a break-even point and then you become a viable operation, and producing profits is the bottom line. And I understand from the Findings of Fact that this thing was foreclosed and it never did get started.

Q Do you have an estimate as to when a hotel project like this should reach a break-even point?

A Yes. The break-even point typically is around 18 months, or in the second year. So you have a loss year and then you have basically a break-even year and the third year is usually the stable or full-time profitable year. Now there can be other things happening, but this is typically (p. 23) what we look at.

Q When you stated that the units were worth zero at the time of sale, you have already explained that you base that belief on the opinion that the chances for success were practically nil as far as the hotel venture becoming a going concern. Were there any other reasons why you considered the partnership units to be worth zero? In other words, are you telling that just to the hotel's success or are you telling that to something else in addition?

A Well, there was one other factor that I haven't mentioned which bothered me, and that is the fact that we were dealing with an individual who was, perhaps, less than honest.

Q Okay. Could you explain what you mean by that?

A Well, he made a number of statements which turned out to be misstatements. And he, I presume, was the author of this Offering Memorandum. And another thing the Offering Memorandum stated was that the general partner would be financed to the extent of 15 percent of the total investment of the limited partners when. in fact, it was never financed. That appears among the findings here. I think the project had a lot of strikes against it.

Q When you are referring to someone here was less than honest, I take it you are talking about Mr. Loftsgaarden?

A Yes.

(p. 24) Q Are you personally acquainted with Loftsgaarden?

A I know him a little bit, yes; not very well.

Q Are you basing your opinion that he is less than honest purely on basically these two documents, or on some other factors?

A Primarily on these documents.

Q How does your belief that he was less than honest affect the value of the units?

A Well, there is a matter of credibility here in how you are dealing with a person in a business transaction. In other words, are you going to be dealing straightforward and aboveboard, or are you going to be having some little deals on the side and that kind of thing. Indicated

in these documents is the fact that he set up an architectural company where he was going to participate 30 percent, and apparently he was sole stockholder of another company, PDRC, which was handling the land lease. I get the opinion that there was some side deals here that were not fully disclosed, so I guess I'm going to the matter of disclosure primarily.

Q How does that failure to disclose have any direct pecuniary impact on the value of the units? You have enumerated specific things that had some pecuniary impact on a particular area. Are you saying this is a separate area? In other words, are you saying that the alleged dishonesty (p. 25) had an impact per se?

A Well, I wouldn't deal with a person to begin with if I knew he lacked in integrity, essentially. I would be afraid to deal with him. And that's part of my opinion, yes. But I think the project was poorly conceived and badly financed and there were some other serious defects aside from Mr. Loftsgaarden. But I think the big weight of it was the bad financing and bad planning. I think that was the basic reason. That's just another straw.

* * *

(p. 26) Q When you said that these factors in your view made the chances of success of this project practically nil, what assumptions were you working on with regard to that statement? In other words, you had to make certain assumptions before you could evaluate these factors in the context of a project like this. Could you describe for me what your assumptions were?

* * *

Q Did you make any assumptions and, if so, what were those assumptions?

A No. I was working primarily from the statements of fact (p. 27) and projections.

Q So you limited yourself —

A Pretty much to what happened in those, and then the subsequent developments which revealed something else.

Q Okay. Well, maybe we can take those one by one. The first thing you mentioned was the land lease and you said that it was supposed to be 40 years and, in fact, it was something else and in your view this affected the value of the units.

A Well, yes, because I think the ground lease usually — In fact, I'm surprised that they ever got a long-term loan because the ground lease is usually subordinated to the long-term financing and has to be firm and usually has to be over the lease itself. Most of them you'll find 99 years, 40 years, 50 years—covering a long period of time and covering what is normally the period of a mortgage. Mortgages on hotels are not 10, 12 or 15 years, but usually 20, 25 years; and the longer the better from a financing standpoint, you see. And I'm looking at the great risk we have here. We've only got a 12-year long-term mortgage, which, of course, is an extremely short time. But it would be difficult to go to somebody else, apparently, and get a longer mortgage with a lease that's such a short period, you see.

Q So you are saying that this lease would have been material (p. 28) insofar as any attempt to obtain a lower mortgage at a later date?

A Yes. Well, at any date. And apparently it may have affected this; I'm not sure. I'm not going to assume anything in this case. There was a 25-year pay-off in terms of the monthly payments which were, you know, the same month after month. But then you have a balloon at the end of 12 years. Whether or not at that point you could get a long-term refinancing, I'm not sure. But unless that lease defect was corrected, you see, your chances weren't very good. In other words, you would have a financial crisis coming up.

Q Do you have any information with regard to this case as to whether any other financing was ever sought other than the initial —

A No. No, I'm not familiar with what happened beyond this point.

Q Are there any other repercussions as to this land lease problem that formed the basis of your opinion, other than the financing problem?

A I don't know if I can answer that because I haven't seen the lease. These ground leases usually have certain provisions that I have counseled on with investors. For example, the rental rate; if we can get it fixed, fine. If it's going to escalate in the escalation clause we have (p. 29) to be careful about that.

Q But you don't have any information right now as to any of that?

A No. I haven't seen the lease.

Q Okay. With regard to the floating rate of interest; you mentioned that was another factor in your

analysis, the fact that the interest rates were floating on the loan as opposed to being fixed.

MR. GRIMSTAD: Which loan?

A The construction loan was one and the furniture loan was another. This was very unusual in this type of investment.

Q Did you make any calculations as to exactly what financial impact these floating interest rates had on this particular project? Or was it more of a generalized opinion on this?

A Well, I made some quick mental calculations, but I didn't get to the point of — Because I haven't seen any results. I would have to see the first year operation results and some others to make any final calculations. But based on the typical financing structure, these are very heavy carrying costs, as these documents indicate, and created some loan situations and other problems, apparently.

Q What is the typical financing structure, in your view?

(p. 30) A Well, the typical financing structure is, for one thing, you have some firm rates. Usually a construction loan may be a point or two higher than your long-term loan, but it's usually a firm rate. Of course, things have happened since that time. Things have changed. But in the early '70's our rates were at 6 or 7 percent and loans were not hard to get. Now, I don't know what happened here but . . .

Q Okay. When you said you did some quick mental calculations can you tell me what those are? Or did they really not enter into your overall conclusion?

A No, I didn't use any figures in the overall picture. but I knew that they were excessive.

Q What should they have been in your view? You mentioned 6 to 7 percent. Is it your view that the construction loan and the chattel loan and all these things should have been in that range? Or what should they have been in your view?

A Well, the lower the better. I don't know if I should speculate here, but I think somewhere around 7 or 8 or 9 percent on a fixed basis would have been compatible. But not 15 or 16. You see, that floating rate kind of killed you.

Q Okay. And when you were saying 7, 8 and 9 percent you were referring that to this time period of 1972 and 1973? (p. 31) In your experience that is what people were getting in that time period for loans of this type?

A Well, I think they were basically lower. I was giving you the high side. There were some 6 percent loans, I believe, in those days; 7 percent loans. But I'm telling you what is compatible with the operation. 8 or 9 percent would not have killed the operation.

Q Would you advise someone against investing or would you deem a project like this to be questionable merely because of the floating rates? I mean, is that enough in your view to make the entire project questionable?

A Well, that depends on other resources of the investors. In this particular case, working capital was pretty low. I think it depends on how much working capital is

available and what the resources are of the individual investors. If there are unlimited resources, then they could probably weather the storm. But this was not the best situation from the average viewpoint.

* * *

(p. 36) Q When you noted that the construction time period was also a factor; that it more typically is a year and in this case it was less than a year and you considered that to be a factor in your evaluation, could you explain to me how that impacted on the value of the units?

A Well, I think in two aspects: One is the dishonesty; he didn't tell the investors the truth. And, secondly, there is a carrying cost involved which was greatly increased by the floating rate. Instead of a seven-month period of construction you had, I believe, a twelve-month period. So it hurt financially.

Q You also mentioned several times that the working capital was less than what you think it should have been. Can you explain to me exactly how that translated or partially translated into a zero value on the date of sale? In (p. 37) other words, even if it was undercapitalized that doesn't necessarily make the units worthless, so could you please explain to me how that fit into your picture, the whole picture of your analysis?

A I don't think I can answer that directly because that's only one segment of the overall picture. The overall picture when you put all these factors together, it appears to me, makes the investment highly suspect. And taken together, each one of these things — I don't know if you can separate one from the other.

* * *

(p. 38) Q Mr. Pikul, did you come to any conclusions as to whether any of these investors received any monetary benefit from their investment in Alotel Associates?

A Well, the only conclusions were those that appear in one of the briefs. I guess there were some tax benefits, if that's what you're referring to.

Q Are you of the opinion that they did receive tax benefits?

Well, I'm not sure. But there was some statement in one of the briefs that there were some tax benefits. I haven't seen any tax returns so I don't know if I can make a conclusion.

Q So your analysis really didn't cover that aspect of the problem?

A No.

Q And when you say they were worth zero, that is apart from whatever tax ramifications may or may not have existed?

(p. 39) A Not exactly because it seems to me that there are certain bonuses or benefits. This goes to the second issue, I believe, where we define a tax shelter; whether this was or was not a tax shelter. But an investment of this type, a hotel investment, does have depreciation charge-offs and a loss usually in the first two years, which may become deductions depending on the structure of the operation. In this type of company or operation there would be some losses deducted on their individual income tax returns, but I consider these as normal and side issues or side benefits or bonuses rather than something of monumental value.

• • •

Q With regard to, you said the second issue which you already touched on was whether or not Alotel Associates was a tax shelter. You listed that as the second issue which you were to address.

A Yes, that's what I was asked to do.

Q Have you come to a conclusion about that issue?

A Yes. I do not believe it was a tax shelter. A hotel investment of this type is a long-term investment. As I (p. 40) mentioned, the depreciation does protect the income and provide deductions against the operating profits and there usually are some tax benefits in the early years, but the basic vehicle is a long-term investment and typically kept until 10 years or later, until depreciation is consumed, and at that time it is then sold for a capital gain.

Q Do you know whether the project in this case was sold for a capital gain?

A No, I'm not familiar with what happened beyond what's here.

Q How would you define a tax shelter? When you were answering this inquiry how did you define it?

A It's probably easier to describe one than to define it, but basically a tax shelter is a vehicle or arrangement, the principal purpose of which is to obtain tax deductions or offsets to a high tax bracket investor's income. Shall I give an example?

Q Sure.

A Typically in oil wells we have a depletion allowance and this provides substantial deductions and, of

course, quite frequently these types of investments are high risk because in the case of oil wells you have dry holes. But commensurate with the high risk, of course, is the possibility of making a strike. So there is a possibility (p. 41) of gain, obviously.

Q Okay. And in this case why do you think that this was not a tax shelter? Are you saying that it didn't meet this principal purpose?

A That's right. The principal purpose of this hotel was a profit-making enterprise, a long-term investment, which was to produce not tax deductions but taxable income.

Q Okay. Mr. Pikul, you are not a lawyer? Is that correct?

A No.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL NO. 476-82

Dr. Roger E. Austin, Dr. Thomas W. Anderson, Dr. Myrel A. Neumann and Dr. William C. Randall v. B. J. Loftsgaarden, et al.

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS
TESTIMONY OF JOHN M. CARLSON

* * *

(p. 39) JOHN M. CARLSON, being duly sworn, testified as follows:

THE CLERK: Please state your full name for the record.

THE WITNESS: My name is John H. Carlson, I live at twenty-six-o-nine East Eighteenth Avenue, North St. Paul, Minnesota.

MR. FLASKAMP: I might state, your Honor, that prior to the hearing, in accordance with the meeting that we had here, I think it was last month or whatever, that we had gone over, between our accountants, I guess, and the accountants in the office, of the attorneys for Austin, Anderson and Neumann, and I believe it is stipulated by and between at least those parties that the figures on Tables One, Two, and Three—that will be introduced—are accurate.

Am I correct on that?

MR. GRIMSTAD: That is correct.

(p. 40) We could also put in the record the total of those amounts because it is not self evident from that exhibit how the totals are to be derived.

MR. FLASKAMP: Okay. We can cover that with him.

MR. GRIMSTAD: All right.

MR. FLASKAMP: Then, if you have some question about it, you can just put it in.

THE COURT: Well, now you are only getting a stipulation from three. How about Mr. Brunig?

MR. FLASKAMP: He didn't agree, your Honor.

THE COURT: Well, let's see why he didn't agree then, because what's the use of having one stipulated and one unstipulated amount?

MR. FLASKAMP: Well, we have four plaintiffs, and three of them agreed, but Mr. Brunig did not agree because of the seventy-five hundred treatment that we've gone through.

THE COURT: All right, I've got it.

MR. FLASKAMP: That we just went through here now.

THE COURT: Go ahead, I understand it.

DIRECT EXAMINATION

MR. FLASKAMP:

Q All right, state your full name please?

A John N. Carlson.

Q And where do you live, sir?

A 2609 East Eighteenth Avenue, North St. Paul.

(p. 41) Q What is your occupation?

A I am a certified public accountant in the state of Minnesota.

Q Will you give the court your educational background, sir?

A I graduated from the University of Minnesota in 1950, with a B. B. A.

Q And will you give us your work history since nineteen fifty?

A I have been in public accounting ever since nineteen fifty, for ten years with a firm in St. Paul.

Q The name of that firm?

A Taylor, McCaskill and Company.
And since that period I have been on my own account.

Q Are you a certified public accountant?

A Yes, I am.

Q How long have you been certified?

A Since nineteen fifty-five.

Q Okay?

A Twenty years less than Mr. Essene.

THE COURT: Off the record.

(Remarks off the record).

THE COURT: Back on the record.

MR. FLASKAMP:

(p. 42) Q And you have been basically then—you have no other occupation?

A No.

Q Now have you examined the tax returns of Randall, Anderson, Austin and Neumann at length?

A Yes, for the years 1973 through '78, and two additional years, I believe it was, for Dr. Randall.

Q And have you examined those returns in connection with this lawsuit and in connection with the Alotel partnership?

A That is correct.

Q And have you prepared certain summaries that we've offered as Plaintiff's Exhibits 1-A, -B, and -C?

A. Yes.

MR. FLASKAMP: I am going to offer those exhibits at this time.

MR. BRUNIG: Your Honor, I am not sure what A, B, and C are.

MR. FLASKAMP: It's the Tables One, Two, and Three.

THE COURT: Go ahead.

MR. FLASKAMP: I don't know what Mr. Brunig said about them.

THE COURT: All right, go ahead.

MR. BRUNIG: Your Honor, we're going to object to the total damages.

I don't believe that that's a summary.

(p. 43) That's conclusion. That's part of 1-C.

And in addition it is my understanding that that is at variance with the Court's ruling on what damages are.

THE COURT: Are you referring to Exhibit C?

MR. BRUNIG: Exhibit C.

THE COURT: Okay.

Well, you can prove that up, or give it a try, anyway, so I'll receive A, and B, and reserve C.

MR. FLASKAMP: All right.

The offer of C is made, your Honor, as his opinion.

THE COURT: What?

MR. FLASKAMP: I gather—you made a premature ruling here, basically—you are going to rule at the end of the case, too—but we're putting the testimony in here.

In other words, what he feels are damages may be different than yours, but that's his opinion.

That's the reason it is on there.

THE COURT: Okay. Well let's do these two first. Then I can understand what he's doing when he talks about it.

MR. FLASKAMP:

Q All right, let's go to Table One, if you will?

A All right.

Q Would you go thr igh what that particular table shows us? We can read the numbers and we can read the names, but tell us what you have done. Take out Doctor Randall for (p. 44) example?

A Utilizing the returns as filed, or in the event that there was a revenue agent's report available which changed those, I selected from the various years the numbers which applied only to the Alotel, including then in those returns. These items that are listed here are the items as reflected in the returns or the revenue agents' reports, which applied to Alotel.

Q And what is Schedule E there?

A Schedule E would be the Schedule E on the form 1040 in which the partnership reports its net ordinary loss or gain.

Q And this is Doctor Randall's share of that?

A That is right.

Q What about Schedule D?

A Schedule D. would reflect the capital gains treatment from an Alotel item, how much was included in the net taxable income from the Alotel reporting.

Q And how about 4797, what is that?

A Apparently in some of those years there must have been some internal transaction within the partnership which was assigned to the individuals, and that would carry over again as an ordinary taxable item on his return.

Q How about investment credit?

A Investment credit had been reported by the partnership to the partners and included in their individual (p. 45) return for whatever qualifying asset was acquired in the partnership.

Q And how about "Cr. recapture"?

A That would be a credit recapture in the event that the partnership terminated the ownership of one of those assets on which it had earlier enjoyed the investment credit prior to the earned period.

Q Now are these actually from the returns themselves sir?

A These are from the returns, or as I said from the revenue agents report, if that overrode the return.

Q All right. Now go to Table Two, if you will, and tell us what you have done there?

A Well, in Table Two what I have done is summarized my work in going through the individual returns, or the revenue agents reports, for each of the years involved, and making a calculation as to what the tax liability would have been had the Alotel times been eliminated from that year, giving effect to the obvious additional items, such as the limitations that would arise on sales taxes from the table, the deduction for that, the medical deductions, the cross deduction of the federal taxes on the state return, and the state on the federal, and this would show me the net tax benefit that had been enjoyed by the partners for each of these years by having Alotel items included in their returns.

(p. 46) Q Now is this also directly from the return?

A That is correct.

Q Now for example let's take Doctor Randall's column and the net reduction from federal income taxes. As far as the money saved in tax benefits to Doctor Randall or the individuals like him on that summary, each of those years, how would you categorize that sum from an accounting stand point?

A You mean as relates to the investor?

Q Yes.

A I would consider that to be a reduction in his capital investment.

Q All right. And that would be true for Randall, Anderson, Austin, and Neumann?

A That is true.

Q All right. Now going down to the second section of the column two, have you done the same thing with the state return that you have done with the federal returns?

A I have.

In the case of Mr. Randall there is one qualification there—possibly some on the others, but I think it's only Mr. Randall where I issue it, and I did not have a revision of his 1978 state return since I did not have any audit report similar to the federal audit report, so I went back and calculated what I thought it would have been had the state also included the same changes as the federal.

(p. 47) Q Have you had a chance to look at the actual return that he filed here recently?

A No.

Q All right. This is your calculation of what you believed would occur?

A That is right.

THE COURT: How far off did he come?

MR. FLASKAMP: I don't know.

Q You haven't looked at it, have you?

A Well, in looking at the net difference between myself and Mr. Essene, I can't believe that we're very far off

on the actual tax numbers overall for the period. We may have some differences—we do have differences by year.

THE COURT: Let me ask you:

When you say that you regarded these items in the first column, like under "Randall" there, as a reduction in his capital investment, that is consistent with the ruling of the Eighth Circuit, what you are saying is?

THE WITNESS: I don't really know, Judge, what the Eighth Circuit has said.

I am not that familiar with that part of the case, as I said.

What I am saying, from an investor's point of view, generally when you look at something which is brought to you as a tax shelter or something, you say, you know, the investor (p. 48) says, "What have I got invested in this," at the end of the first year, the second year, and you always take into consideration the tax savings because that's part of his decision to enter into the investment in the first place.

THE COURT: Well that's in effect what the Court of Appeals said isn't it?

MR. FLASKAMP: I believe so, your Honor.

THE COURT: Okay, go ahead.

MR. FLASKAMP: All right.

Q Then going down to the bottom one where you have permanent tax reductions after recapture, will you tell us what you have here?

A That's a summary of the items up above, combining the federal and the state tax savings in the first two

lines and—excuse me—on the first line is the federal savings, and on the third line is the state savings, in actual taxes, from the filings that were submitted.

The times on the second and fourth line are actually the carry over of the tax benefit which would have arisen in later years from the additional taxes that were paid by these partners in 1973 when they had recapture.

Q All right. Now I am at Table Three, your Honor, so—which is a compilation of the other two.

MR. FLASKAMP: Maybe I could amend Table Three by saying, "Summary of Defendant's Claimed Damages," with the (p. 49) heading, whatever—

THE COURT: Yes.

MR. FLASKAMP: —I think it is self evident anyway, but—

THE COURT: Well, why don't you just change the name when you get time?

MR. FLASKAMP: All right.

Q Go to Table Three, then, if you would and will you tell us what you have done with Table Three, Mr. Carlson?

A Table Three then is a carry over from Exhibit B of the tax savings which were realized by each of the partners.

And following that are the investment totals as they were furnished to me.

And the difference between the two winding up showing the net damage or benefit in each case that the investor or partner had with relationship to his tax savings and his investment, his original investment.

Q All right. Now in connection with your figures, you have been here when Mr. John Essene testified, did you not?

A Yes.

Q And I want to discuss with you your opinion as to the validity of certain assumptions.

First, that fifty-four percent number that he used. Do you have an agreement with him on that or do you not?

A Well, I think the fifty-four percent is something (p. 50) which is utilized by accountants when they are in the area of estimation and planning.

I don't think it relates to usage when you are into actual figures—which we have available here from the returns.

Q Are your figures the actual returns themselves?

A I have used the actual returns or, as I have stated previously, the revenue agents report where it was—

THE COURT: How far apart are you.

THE WITNESS: We're approximately twenty-eight hundred dollars apart, I believe, on the tax question.

And the rest of the difference arises from the seventy-five hundred dollars which he is treating—well, I guess we're not—we're twenty-eight hundred dollars apart on the tax question—

MR. FLASKAMP: In other words—

A —overall.

THE COURT: Well, let me ask Mr. Essene a question there.

Mr. Essene, how do you justify taking fifty-four, when actually on the man's return—if you had to figure it out and pay it—it would be something substantially less than fifty-four percent?

MR. ESSENE: Well, we're using a federal rate of fifty, and the state rate of fifteen, each being cross deductible to the other. You have to do it by algebraic (p. 51) equation to get the correct amount.

THE COURT: I understand that.

But in the amount of tax that he was paying, aside from these computations, what was he actually paying in taxes? Isn't that more relevant than what would be the maximum?

MR. ESSENE: No, because what actually is paid is followed by consequences.

For example, if one year you got assessed an extra thousand dollars federal, then either that year or the next year, when you paid the thousand dollars, that would reduce your state tax by a hundred and fifty dollars. Then the following year, or that same year, on the federal—because your state tax had been reduced by one hundred fifty—there would be a seventy-five dollar additional federal tax. Which in turn would reduce the state by thirteen dollars. And down to zero. And it takes—

THE COURT: You know what that reminds me of—off the record.

(Remarks off the record).

THE COURT: All right, back on the record.

MR. FLASKAMP:

Q All right, now in connection with the seventy-five hundred dollars figure that was the basis of Mr. Essene's computation, do you agree with the manner in which he used that particular item as a capital investment?

(p. 52) A I really don't believe that is an accounting question.

It is my understanding the seventy-five hundred dollars was a loan.

As such, it would have been an addition to his basis for tax purposes.

And I find no objection to it being used in tax calculations.

But again that was fully considered by me, and I am sure by the Revenue Department, in their settlement in 1978, so we have both included the seventy-five hundred dollars in the tax calculation.

Whether it comes into the investment area, is not my prerogative.

I understand it was a loan someplace.

Q Well what I am getting down to is:

You had a difference in your calculations, from Mr. Essene's, in addition to the fifty-four percent in your numbers that you come up with here.

And where does that other difference come in sir?

A Well, we've several minor differences which I think should be made a matter of record, if you wish me to.

Q Go ahead?

A Could I have Mr. Essene's summary?

MR. BRUNIG: I believe it is in front of the (p. 53) witness as Exhibit A.

THE WITNESS: I don't have it.

MR. FLASKAMP:

Q Here, take this.

A Mr. Essene and I are in agreement I think as to the items which are Alotel items with the exception—if you go to our Exhibit A, as compared to the exhibit eight—Mr. Essene has included in 1975 legal and accounting expenses of seven hundred and eighty dollars.

I had no way of knowing at the time that I reviewed the returns that that was a pertinent Alotel item.

Apparently the taxpayer, Mr. Randall, in this case had incurred expenses relative to Alotel which he claimed on his return, but they were not Alotel items that were identified to me.

In 1977—excuse me—in both 1976 and 1977 there were items from the form 4797, as filed under the 1040, which were Alotel items which were not included, apparently in Mr. Essene's calculations. I do not know why they are not in there, but they are not.

The other differences are, of course, as I said before, that he used the fifty-four percent overall rate in each year, treating it somewhat differently in 1978 on recapture.

And our net difference for all of these years revolves about around twenty-eight hundred dollars difference in (p. 54) tax.

He has also shown on exhibit eight a total loss on investment, which differs from our presentation of the summary of damages sustained, by the amount of the seventy-five hundred dollars which he proposes to recapture here as a loss on investment.

And that's not my determination to make, whether that's part of the investment or not.

Q Elaborate on that. What do you mean by that? You have done what? Has he made some assumptions?

A Well, on his schedule on exhibit eight he shows, in the year 1975, cash invested of seventy-five hundred dollars.

I presume that those are the loans—in fact I think that was so testified.

In our summary we've not included the seventy-five hundred dollars as an investment.

THE COURT: And you were told not to do that by either Loftsgaarden or his lawyer?

THE WITNESS: Right, that is correct.

THE COURT: What?

THE WITNESS: That is correct, it's—

THE COURT: But you weren't satisfied that it was appropriate to treat as an investment for tax purposes?

THE WITNESS: Yes, the tax law is specific in that area, the loan would have been part of the taxpayer's basis.

(p. 55) I don't know that it would have been called "investment" per se. I don't know how definitive you want to get with the words here.

It's part of his basis.

THE COURT: So I would distinguish the Court of Appeals' finding that it couldn't be recovered, as part of a fraudulent transaction, from the total overall tax picture; and allow it to be used as Essene used it.

MR. FLASKAMP: We believe that it was a loan, and that what he receives back—the tax benefits—that's a recapture, per se.

THE COURT: Well your own witness says that it was appropriate to use it as a part of his investment basis.

Now which expert are you using to draw your conclusion?

MR. FLASKAMP: Gee, I didn't hear him say that.

MS. UNDERKUFFLER: Your Honor, I think maybe part of the problem is that it was used in two different places in Mr. Essene's report.

Maybe Mr. Carlson will correct me if I am wrong, but it is my understanding it was used as part of the basis.

And then at the end he subtracted it out as a—or he added it in as a loss on the investment.

I don't think we have any dispute that it would be—as far as an accounting principle—it would properly be (p. 56) included in the basis.

The problem we have is the fact that at the end he takes it as part of the loss on the investment.

Is that correct Mr. Carlson?

THE COURT: Well, that's consistent.

But you don't like the law as interjected by the Eighth Circiut, Laura. I think that's the problem. You are trying to cut it into two pieces—I think—now I want to be sure I am right.

MS. UNDERKUFFLER: Well, no, Your Honor, the problem is that they were denied recovery of the loans. That's the problem that they have on that matter.

And in fact this tax—back to this seventy-five hundred dollars—they are treating it is a tax benefit, and that in fact is what it was, as part of the basis for recapture.

THE COURT: Let's see if you and I can work this together so we have a kind of concise statement.

After the original partnership investment was made, over a period of two or three years, the plaintiff Randall loaned more money to the partnership.

MS. UNDERKUFFLER: Uh-huh (Nods head in an affirmative manner).

THE COURT: It is a non-recourse loan, but his equity in the partnership must have increased.

Anybody argue with that?

(p. 57) MR. FLASKAMP: Equity in the partnership?

THE COURT: Yes. He became a bigger partner than he was before.

MR. FLASKAMP: How could that be true if they all made loans?

THE COURT: Well, to the extent that his loan was bigger than anybody else's.

MR. FLASKAMP: Well, we don't know that.

THE COURT: No, but —

MR. FLASKAMP: Everybody made loans.

THE COURT: Okay. But I wonder if we couldn't resolve this now.

Did the fact that he made more loans — if he had made a bigger loan than someone else — would his partnership share have been bigger than the other persons?

MR. FLASKAMP: The witness says no.

THE COURT: How does the witness know? He doesn't have anymore evidence than you or I do.

MR. FLASKAMP: Well, we don't have any evidence either of what the other people loaned.

THE COURT: Wait a minute —

MR. GRIMSTAD: Your Honor, for the record it did not increase their limited partnership interest.

Their units stayed the same. Their interest in the partnership does not change, as a matter of partnership law.

(p. 58) What happens as a matter of tax law is that the basis in the limited partnership increased.

There is a different treatment for the legal ownership impact, and the tax impact.

MR. BRUNIG: I think we ought to maybe get some evidence on the subject, your Honor, from the witness;

rather than having lawyers speculate. I think that Mr. Grimstad's statement would be consistent with what the witness would testify to.

MR. FLASKAMP:

Q Do you agree with Mr. Grimstad there, Mr. Carlson?

A Yes.

I would only like to say in, from an accountant's point of view, as I understand it, Mr. Randall had two different hats at that time. He had one hat as a partner, and he had another hat as a creditor.

Now on your legal points of view, I would presume that you make a clean division between those two as to what he was, and apparently the courts have done that — I don't know what has transpired here.

But for income tax purposes, of computing his gains and losses, from the partnership, ultimately, the seventy-five hundred dollars would be considered part of his basis — as was explained.

It has nothing to do with the — we misquote, I (p. 59) guess, when we call it an "investment", I mean that gets kind of cluttered up.

THE COURT: Now Ms. Underkuffler has a different view of how it should have been handled in another place.

MS. UNDERKUFFLER: Maybe, Your Honor, the best thing would be to just ask the witness.

Q Mr. Essene's calculations came out seventy-five hundred dollars less in tax benefits than yours did — or

more, actually; but part of it was the seventy-five hundred dollar difference.

And could you tell us, Mr. Carlson, why you think that your treatment of the total tax benefit was preferrable to the method that was used by Mr. Essene, why did you use your method as opposed to his in the treatment of the seventy-five hundred?

A I want to make it clear that I don't believe Mr. Essene and I treated the seventy-five hundred dollars differently in the calculation of taxes.

We treated it differently in the summary of damages.

Again getting back to our Schedule C, we show an investment basis of $35,000.

Mr. Essene, in effect, in his summary has carried the investment at 42,500, including the $7,500 loan as part of the calculation.

(p. 60) It has nothing to do with the way we calculated the taxes.

The actual difference between Mr. Essene's tax calculations and mine are several minor items which he did not include, plus the thing that he did include of the attorneys' fees, which I mentioned, and the major item being the fact that he used an overall planning rate of fifty-four percent, whereas I went to the actual returns and used the government tables and the calculations as determined by the Internal Revenue Service and what would have been reportable according to those tables, with the actual numbers involved.

THE COURT: Okay.

Here is what I would like to have this witness do for me.

First of all if there are those attorneys' fees and expenses in connection with it, he doesn't have a basis to dispute that, so we allow it — the seven hundred bucks or whatever it was.

MR. FLASKAMP:

Q We'd agree with that, wouldn't we?

A You understand that is only a number which you utilize to arrive at a tax calculation.

It is not part of the damages.

Q Oh, well I guess —

A In other words, if you are going to use Mr. (p. 61) Essene's approach, you would use the fifty-four percent, I presume, of the $700.

Q Oh, fifty-four percent of seven hundred on the Essene approach?

A Yes.

MR. FLASKAMP: Well, we would agree that fifty-four percent of the seven hundred dollars could be included in the damages.

THE COURT: Okay.

Now next I would feel better about taking the actual tax rate. And I don't think that will change it much, maybe two thousand bucks or less, right?

THE WITNESS: As I said, our differences according to the tax calculations are twenty-eight hundred dollars.

THE COURT: All right, do the $2,800.

Then I am going to give you my rationale for allowing them to use the $7,000 as —

MR. FLASKAMP: 7500.

THE COURT: — or 7500 as part of the loss; and that is that we don't want to confuse what the Court of Appeals said in the two different sides of its statement.

It said the seventy-five hundred is not recoverable.

But it did not say that the seventy-five hundred could not be used to compute the actual loss.

(p. 62) MR. FLASKAMP: Well, he doesn't know anything about that. He's never read that appellate decision.

THE COURT: Yes, but I know about it —

MR. FLASKAMP: Yes.

THE COURT: — and so that we have it on the record here, and this is the way my opinion would appear, that it would be highly inequitable for the Court of Appeals to say, "No, you can't recover it; and, furthermore, since you can't recover it, you can't even count it as part of your tax loss."

I say that, even though they couldn't recover it, they can show it in the actual transaction as to what their actual loss was or what their advantage was from the tax returns, however you want to put it.

MR. FLASKAMP: So you have just saved two paragraphs in your memorandum.

THE COURT: The law clerk will take care of that. That's why I say it sometimes. Okay?

MR. FLASKAMP: Okay.

I am going to offer that Exhibit 3(sic), your Honor.

THE COURT: All right.

MR. FLASKAMP: Exhibit 1-C.

THE COURT: All right.

Now, Mr. Essene, you two can maybe sit down and agree on it, what the actual tax — take the rate that actually (p. 63) appears in the returns, so we just get rid of it; it doesn't make a whole lot of difference anyway.

MR. GRIMSTAD: Now, your Honor, if I may:

Based upon what you have just idicated about separating the Court of Appeals opinion — from the recovery on one side, to the calculation of loss on the other — that could conceivably change our position concerning the tax calculations; because we followed the method that they were following.

THE COURT: Did you hear that?

MR. FLASKAMP: No I didn't hear that.

MR. GRIMSTAD: We followed the method that the defendants were following.

THE COURT: Now that I have ruled in favor of Randall in terms of how he handled the loan, the other plaintiffs want to recompute theirs.

MR. GRIMSTAD: Other than that, we would not have any differences between the defendant and my plain-

tiffs — but not in the calculation of the other tax benefits.

THE COURT: Is Essene doing your accounting, too?

MR. GRIMSTAD: No, he's not, your Honor.

THE COURT: Well, you better get your accountants together with Mr. Carlson and see how that works out.

MR. GRIMSTAD: One of our attorneys has met with Mr. Carlson and gone over some of his calculations, and we can do that again.

(p. 64) THE COURT: Okay. Anything else?

MR. FLASKAMP: Yes, we do, Laura has one question she would like to put —

THE COURT: Go ahead.

MR. FLASKAMP: — but, before you do that:

So that we get the scope of this, they are going to get together now, and they want to say, "We're going to treat this now as an investment of capital for tax purposes, even though you can't recover for the loan, and figure out the difference then in those two numbers"?

THE COURT: Right.

MR. FLASKAMP: So you want to have that as an alternative number some place?

THE COURT: Right.

MR. FLASKAMP: Uh-huh. Well we can do that.

THE COURT: Okay.

MR. FLASKAMP: All right, go ahead.

MS. UNDERKUFFLER:

Q Mr. Carlson, you were here when Mr. Essene testified in response to the Court's questioning that, if Randall had gotten away without reporting his recapture, in 1981, as a result of the audit, that Mr. Loftsgaarden would have been better off.

Do you have any response to that particular position?

(p. 65) A I don't know if I have a response which is definitive.

It certainly raises questions in my mind — I don't remember the basis on which he did not report that in 1978, or was advised not to report it.

I guess I would respond with a question that, if he did not report it in 1978 based on that advice, would he have later on reported it in some other year and, at that point, had the same or approximately the same tax consequence from the recapture?

I mean you can't — you don't just — sometimes things slide through the cracks with the Internal Revenue Service.

But I think if they had accepted his approach as to why it wasn't reported in 1978, would he then have years which are open— since then — which the Internal Revenue Service could then say, "Yes, now you must recapture it because we accept your original argument?"

THE COURT: But at least if he took any unconscionable step, as Mr. Flaskamp kind of indicated at an earlier time, that unconscionable step — absent having had to have paid it in a later year, it would have inured to the benefit of Loftsgaarden, wouldn't it; his failure to report the recoupment?

THE WITNESS: If he had never reported, Your Honor, (p. 66) that would be true.

THE COURT: Yes, okay.

MS. UNDERKUFFLER:

Q And that would also have been true if he had never reported any of his various items, isn't that the case?

A Well, anything on the return, he could leave out his salary —

THE COURT: But at least Loftsgaarden is not in a position to say that Randall was trying to cheat him by doing anything.

It was between him and the government, it was between Randall and the government at that point.

MS. UNDERKUFFLER: Your Honor, we have never made any allegation that doctor Randall's actions were dictated by trying to cheat Mr. Loftsgaarden.

He was trying to avoid paying taxes.

THE COURT: But I want the record to show my finding in that respect.

MS. UNDERKUFFLER: Your Honor, I don't think we have any further questions of this witness.

For the record I would like to make a few comments with regard to the issues on which the court has indicated it will rule against us.

With regard to the attorneys fees issue, it is our position —

(p. 67) THE COURT: Just a minute, somebody is standing up over there.

MS. UNDERKUFFLER: Oh, yes —

MR. BRUNIG: Yes, I think we should have our opportunity to cross examine the witness before counsel makes her argument.

MS. UNDERKUFFLER: You certainly have, go right ahead.

THE COURT: Okay.

And then the other thing is, basically, I don't think we've added a whole lot to the briefs here, and that was the basis on which I made my ruling when we came in, to save you a lot of trouble.

Go ahead.

CROSS EXAMINATION

MR. BRUNIG:

Q Mr. Carlson, you testified that you weren't aware of where Doctor Randall got the seven hundred eighty dollars on his tax return, that it wasn't indicated as such, did you not?

A Yes, I was not aware of it when I made my calculations, that there were any other Alotel items in that tax return.

Q Would you turn your attention to schedules E and R on Exhibit Three, Doctor Randall's 1975 tax return?

A Which schedule?

(p. 68) THE COURT: E and R

MR. BRUNIG:

Q Schedule E and R on —

MS. UNDERKUFFLER: We have our copies.

I don't know where the clerks' exhibits are.

THE COURT: Give him your copy.

MR. BRUNIG: All right — I am afraid my client took the exhibits, or my clients' account and took the exhibits.

Exhibit 3, the seventy-five returns, schedules E and R?

A Okay, yes.

Q Would you look at part three, Alotel Associates, unreimbursed expenses, there is a seven hundred eighty dollars expense item there, isn't it?

A Yes, there is.

Q And that appears to be the same item, does it not?

A That is true.

Q And in fact down—.

The explanation of column E, part two, it has the expenses for that, does it not?

A It does.

Q And it lists accounting fees, legal fees, et cetera?

A That is right (Nods head in an affirmative manner).

(p. 69) Q Now you don't claim to be an expert on the law as it applies to this case, do you Mr. Carlson?

A No.

Q So the question of damages is not a part of your opinion.

It is only the tax consequences that you have a professional opinion concerning.

Is that correct?

A That is correct.

Q You testified that there was a reduction in the capital investment as a result of Doctor Randall and the others investments in Alotel Associates, did you not?

A I believe that I testified that that is the way that an investor would, that I am acquainted with, would evaluate the situation, yes (Nods head in an affirmative manner).

Q And a reduction in capital investment is not income for tax purposes, is it?

A No.

Q And so to say that the amounts, which were deducted as losses from the investment, then constituted a reduction in the capital investment wouldn't have been income received by Doctor Randall or the others, would it.

THE COURT: Are you worried that I was mixed up about that?

(p. 70) MR. BRUNIG: Well I just wanted the witness's opinion as to whether or not the tax consequences

of Doctor Randall's investment in Alotel Associates constituted income which Doctor Randall received.

THE COURT: The answer is no.

MR. BRUNIG: Is that your opinion?

THE COURT: I take judicial notice that he didn't receive any income.

MR. BRUNIG: Well I just wanted to know if that was the witness's opinion.

THE WITNESS: The seventy-five hundred dollars was income?

THE COURT: No.

MR. BRUNIG: No.

THE WITNESS: Excuse me.

I guess I don't understand the question.

THE COURT: You took about twenty-six hundred dollars off his investment there.

And you said that is a reduction in capital investment over a period of a couple years.

And is that income?

MR. BRUNIG:

Q Is that income?

A I still do not understand the question.

I'm very sorry, but I just don't.

(p. 71) Q Okay. Is the reduction in capital investment which Doctor Randall incurred by virtue of his in-

vestment in Alotel Associates, and the tax consequences in that investment, income which Doctor Randall received?

A I would not consider it as such (shakes head in a negative manner).

MR. BRUNIG: I don't believe I have any further questions, your Honor.

* * *

DEFENDANTS' NO. 1-A

TABLE I.

The following items are the actual deductions or credits (or if, in parentheses, the amounts of recapture) taken by the plaintiffs on their tax returns, as a result of their investment in Alotel Associates, for the years 1973-1978:

Randall	1973	1974	1975	1976	1977	1978
Schedule D						($30,075)
Schedule E	$21,119	$30,107	$23,023	$17,700	$14,716	(1,963)
4797				70	627	
Inv. credit		2,451	75	52		
Ch. recapture				36	1,323	79
Austin						
Schedule D						(27,692)
Schedule E	21,120	30,028	22,177	17,301	14,636	(1,963)
4797					693	
Inv. credit		2,451	75	52		
Cr. recapture				69	1,323	79
Anderson						
Schedule D						(30,076)
Schedule E	21,120	30,048	22,177	17,301	14,636	(1,963)
4797					706	
Inv. credit		2,451	75	52		
Cr. recapture				48	1,323	79
Neumann						
Schedule B			130			
Schedule D						(60,552)
Schedule E	31,679	45,030	33,265	25,951	21,955	(12,767)
4797				105	942	
Inv. credit		3,677	113	77		
Cr. recapture						

Note: These deductions and credits were obtained by the plaintiffs for an investment of $35,000 each, with the exception of Neumann, who invested $52,500.00.

DEFENDANTS' NO. 1-B

TABLE II.

The following items are the amount of net reduction in Federal and State income taxes which the plaintiffs obtained as a result of the deductions and credits shown on Table I, for each year from 1973-1978, together with total permanent tax benefits after recapture:

	Net Reduction In Federal Income Taxes			
	Randall Anderson		Austin Neumann	
1973	$ 1,333	$ 8,053	$ 9,903	$14,813
1974	16,584	13,482	15,882	6,279
* 1974 I.C.C.B.				3,677
1975	9,507	10,125	9,917	10,962
1976	9,033	9,942	2,211	3,062
* 1976 I.C.C.B.				77
1977	6,543	7,354	5,871	6,294
1978	(16,014)	(28,031)	(19,459)	(4,537)
	$26,986	$20,925	$24,325	$40,627
** 1978 T.C.B.O.	$2,160	$3,927	$2,726	$ 559

Net Reduction In Minnesota Income Taxes

	Randall Anderson		Austin Neumann	
1973	$3,166	$3,168	$3,163	$4,747
1974	4,684	3,667	3,377	3,569
1975	974	862	946	3,469
1976	1,239	1,069	1,113	1,826
1977	754	618	1,775	2,706
1978	(5,841)	(7,943)	(6,815)	(699)
	$4,976	$1,441	$3,559	$15,618
** 1978 T.B.C.O.	$2,282	$3,322	$2,723	$ 210

PERMANENT TAX REDUCTION AFTER RECAPTURE (1978)

	Randall Anderson		Austin Neumann	
	$26,986	$20,925	$24,325	$40,627
Federal	2,160	3,927	2,726	559
	4,976	1,441	3,559	15,618
State	2,282	3,322	2,723	210
	$36,404	29,615	33,333	57,014

* I.C.C.B. Investment Credit Carry Back

** T.B.C.O. Tax Benefit Carryover of Cross Deduction

DEFENDANTS' NO. 1-C

TABLE III.

SUMMARY OF DAMAGES SUSTAINED BY PLAINTIFFS AFTER RECAPTURE:

Company Permanent Tax Reduction After Recapture (Table II) with amount invested, the plaintiffs show the following total damages* sustained:

Austin	$27,884	
	5,449	
	$33,333	— tax benefits
Investment total:	$35,000	
Total damages:	1,667	
Anderson:	$27,884	
	7,249	
	$29,615	— tax benefits
Investment total:	$35,000	
Total damages:	5,385	
Neumann:	$56,245	
	769	
	$57,014	— tax benefits
Investment total:	$52,500	
Total damages:	Zero	
Randall:	$31,962	
	4,442	
	$36,404	— tax benefits
Investment total:	$35,000	
Total damages:	Zero	

*This does not include the use of the much larger amount of money which the plaintiffs had as the result of the net reduction in state and federal income taxes during the years 1973-1977, prior to recapture. *See* Table II.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

AFFIDAVIT OF
JOHN ESSENE

Filed January 25, 1984

(Title Omitted in Printing)

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

JOHN ESSENE, being first duly sworn, upon oath deposes and states:

1. I am a certified public accountant and am authorized to practice my profession in the State of Minnesota.

2. At all relevant times, I have provided accounting services to and prepared federal and Minnesota state income tax returns for William C. Randall.

3. I have reviewed a letter dated January 4, 1984, and addressed to Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan by John M. Carlson. It is my opinion that Mr. Carlson's statement:

> I have calculated the 1978 tax benefit arising from the $7,500 recognition and basis, and it reduced the federal and Minnesota tax for that year in the amounts of $1,875 and $636 respectively.

requires clarification. Dr. Randall made two loans to Alotel Associates; he did do in 1975. The total amount of the two loans was $7,500.00. Dr. Randall's federal and Minnesota state income tax returns treated the $7,500.00 in loans as an increase in the "basis" of his investment in Alotel Associates. The "basis" was increased as of the

dates of the loans, not as of 1978. Both the Internal Revenue Service and the Minnesota Department of Revenue have accepted that treatment. Both the Internal Revenue Service and the Minnesota Department of Revenue audited Dr. Randall's 1978 income tax returns. Both the Internal Revenue Service and the Minnesota Department of Revenue determined that Alotel Associates should have treated the foreclosure of the Ramada Inn in Rochester, Minnesota, which Alotel Associates had owned, as a "disposition" of the property, that Dr. Randall should have recognized his *pro rata* portion of the "gain" and should have "recaptured" certain accelerated depreciation and portions of investment tax credits and that Dr. Randall owed additional taxes. If Dr. Randall had not increased the basis of his investment in Alotel Associates by $7,500.00 in 1975 by virtue of his loans to Alotel Associates he would have had a lesser "basis" in his investment in Alotel Associates, would have been required to recognize greater "gain" in 1978 and would have been required to pay additional federal and Minnesota income taxes in 1978. Because the increase in his "basis" in Alotel Associates resulted in a lesser "long-term capital gain," the combined federal and Minnesota "tax benefit" was approximately $2,025.00. If Dr. Randall, the Internal Revenue Service and the Minnesota Department of Revenue had disregarded the loans, Dr. Randall's "damages" would have been greater (if it were to be assumed that "tax benefits" reduce damages); if Dr. Randall, the Internal Revenue Service and the Minnesota Department of Revenue had not treated the loans as an increase in the basis of Dr. Randall's investment in Alotel Associates and had treated the loans as ordinary loans, Dr. Randall would have been entitled to a "bad debt" deduction. Because a "bad debt" deduction would have reduced Dr.

Randall's adjusted gross income and because such income is taxed at a rate higher than the rate at which "long-term capital gains" are taxed, such treatment would have offered Dr. Randall a greater "tax benefit." However, neither Dr. Randall, the Internal Revenue Service nor the Minnesota Department of Revenue considered such treatment appropriate. In addition, Dr. Randall disbursed $780.00 in legal and accounting fees in 1975 and did deduct those fees on his 1975 federal and Minnesota state income tax returns. Those fees did not affect Dr. Randall's "basis" in Alotel Associates. However, the "tax benefit" which Dr. Randall realized from his payment of those fees was only approximately $421.00. Thus, he had an actual out-of-pocket expenditure of $359.00. He has never been reimbursed for that expenditure and has not obtained any further "tax benefit."

4. I have reviewed a letter dated January 5, 1984 and addressed to Roberta Walburn by Laura S. Underkuffler. The calculations and conclusions expressed in that letter do not appear to be based upon any general accepted accounting principle. In fact, Dr. Randall, the Internal Revenue Service and the Minnesota Department of Revenue all considered Dr. Randall's original "basis" in Alotel Associates to be the $35,000.00 which he invested in 1973; all increased his basis by the $7,500.00 in loans which he made to Alotel Associates in 1975; and all now consider him to have disposed of his investment in Alotel Associates in 1978. Ms. Underkuffler's letter seeks to increase Dr. Randall's "basis" by $2,512 in 1975 and to take advantage of a "tax benefit" of $2,512.00 in 1978. That ignores the uniform treatment of the loans by Dr. Randall, by the Internal Revenue Service and by the Minnesota

Department of Revenue. Although the $780.00 which Dr. Randall deducted as a legal and accounting fee attributable to Alotel Associates in 1975 "does not affect [Dr.] Randall's basis," it does relate to an expenditure made and a loss suffered by Dr. Randall. If Dr. Randall had not invested in Alotel Associates, he would not have expended monies for those fees. Although Dr. Randall was able to deduct those fees as a "business expense," he has never been reimbursed for the approximately $359.00 which he has not recovered either in cash or from the "tax benefit" of his allowable deduction.

5. It is my opinion that any recovery which Dr. Randall may obtain and which constitutes a "disposition" of his investment in Alotel Associates or interest will be subject to both federal and Minnesota state income taxes. Because the combined marginal rate on Dr. Randall's ordinary income, including interest, would be approximately 54% and upon "long-term capital gain" would be approximately 22%, it is my opinion that in order to make Dr. Randall "whole" ordinary income, including interest, should be multiplied by 2.173 and that return of his investment should be multiplied by 1.282.

FURTHER AFFIANT SAITH NOT.

/s/ John Essene

Subscribed and sworn to before me
this 24th day of January, 1984.

/s/ Tammy J. Heuer
Notary Public

(SEAL) TAMMY J. HEUER
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 25, 1990

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

AFFIDAVIT OF JOHN M. CARLSON

Filed February 13, 1984

[Title Omitted in Printing]

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

JOHN M. CARLSON, being duly sworn on oath, deposes and states:

1. That he is a Certified Public Accountant, as previously indicated to the Court in his testimony at the above-entitled matter;

2. That at the request of the defendants in the above matter, he has made certain simple arithmatic calculations as to the amount of interest to which each of the plaintiffs would be entitled, taking into account the tax benefits received by each plaintiff during each year of his investment in Alotel Associates. It is your affiant's understanding that these calculations have been previously supplied to the Court with the defendants' post-trial memorandum. They are attached hereto as Exhibit "A";

3. That at the request of the Court in the above-entitled matter, he has made certain calculations as to the income tax benefit which resulted from the inclusion of the $7,500.00 in loans and plaintiff Randall's basis when he

experienced recapture in 1978. Those calculations are attached hereto as Exhibit "B".

Further your affiant sayeth not.

/s/ John M. Carlson

Subscribed and sworn to before me
this 13 day of February, 1984.

/s/ Sandra K. Smith

SANDRA K. SMITH
Notary Public—Minnesota
(SEAL) Ramsey County

My Commission Expires
March 18, 1989

EXHIBIT A

RANDALL

	Invested	Net Reduction (increase) In Tax Liability Current	Carry-back	Balance	Days	Interest Cost (earned) at 8%/ annum
11/13/73	35,000			35,000	153	1,174
4/15/74		4,449		30,501	365	2,440
4/15/76		10,481		(1,248)	365	(100)
4/15/75		21,268		9,233	365	739
4/15/77		10,272		(11,520)	365	(922)
4/15/78		7,297		(18,817)	365	(1,505)
4/15/79		(21,855)		3,038	365	243
4/15/80		4,442		(1,404)	1,339	(412)
12/15/83	35,000	36,404		(1,404)	3,682	1,657

ANDERSON

6/ 2/73	35,000			35,000	317	2,432
4/15/74		11,221		23,779	365	1,902
4/15/75		17,149		6,630	365	530
4/15/76		10,987		(4,357)	365	(349)
4/15/77		11,011		(15,368)	365	(1,229)
4/15/78		7,972		(23,340)	365	(1,867)
4/15/79		(35,974)		12,634	365	1,011
4/15/80		7,249		5,385	1,339	1,580
12/15/83	35,000	29,615		5,385	3,846	4,010

NEUMANN

8/21/73	35,000			35,000	58	445
10/19/73	17,500			52,500	178	2,048
4/15/74		19,500		32,940	365	2,635
4/15/75		9,848		23,092	365	1,847
7/15/75			3,677	19,415	91	387
4/15/76		14,431		4,984	274	299
4/15/77		4,888		96	365	8
7/15/77			77	19	91	..
4/15/78		9,000		(8,981)	274	(539)
4/15/79		(5,236)		(3,745)	365	(299)
4/15/80		769		(4,514)	1,339	(1,325)
12/15/83	52,500	53,260	3,754	(4,514)	3,765	5,506

Note: On carrybacks (Neumann) July 15 was used assuming carrybacks were filed concurrently with tax returns and that Form 1139 was used—IRS has 90 days to make refund or take action.

AUSTIN

		Net Reduction (increase) In Tax Liability				Interest Cost (earned) at 8%/
	Invested	Current	Carry-back	Balance	Days	annum
6/26/73	35,000			35,000	293	2,248
4/15/74		13,066		21,934	365	1,755
4/15/75		19,259		2,675	365	214
4/15/76		10,863		(8,188)	365	(655)
4/15/77		3,324		(11,512)	365	(921)
4/15/78		7,646		(19,158)	365	(1,533)
4/15/79		(26,274)		7,116	365	569
4/15/80		5,449		1,667	1,339	489
12/15/83	35,000	33,333		1,667	3,822	2,166

SUMMARY

	Invested	Tax Benefit	Interest Cost	Damages and Interest
RANDALL	35,000	36,404	1,657	253
ANDERSON	35,000	29,615	4,010	9,395
NEUMAN	52,500	57,014	5,506	992
AUSTIN	35,000	33,333	2,166	3,833

No recognition is given in these figures to $780 legal cost claimed by Randall in 1975 as this was not a flow-through item from partnership. If he is to be credited at 46% then his damages would increase $359 and interest thereon from 4/15/76 would be $220—Total Additional $579.

EXHIBIT B

JOHN M. CARLSON, C.P.A. 612 484-0602
SUITE 219 3570 LEXINGTON PKY. NO.
SAINT PAUL, MINNESOTA 55112

MEMBER:
AMERICAN INSTITUTE AND
MINNESOTA SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

January 4, 1984

Meagher, Geer, Markham, Anderson
Adamson, Flaskamp and Brennan
2250 IDS Center
Minneapolis, Minnesota 55402

Dear Ms. Underkuffler,

It appears from the returns filed and from the revenue agent's report that William Randall was given a basis credit of $7,500 for his loans to Alotel.

The basis only affects tax calculations in 1978, which is the year of recapture. I have calculated the 1978 tax benefit arising from the $7,500 recognition in basis, and it reduced the federal and Minnesota tax for that year in the amounts of $1,875 and $637 respectively.

The $780 legal and accounting expense claimed by Dr. Randall in 1975 did not affect his basis since it was disbursed and deducted in the same year. As previously discussed, this item was not a pass through item in the partnership accounting.

Very truly yours,
/s/ John M. Carlson

JMC:rc